

United States
Circuit Court of Appeals
For the Ninth Circuit.

F. E. WHELPLEY,

Appellant,

vs.

ANDREW GORSVOLD,

Appellee.

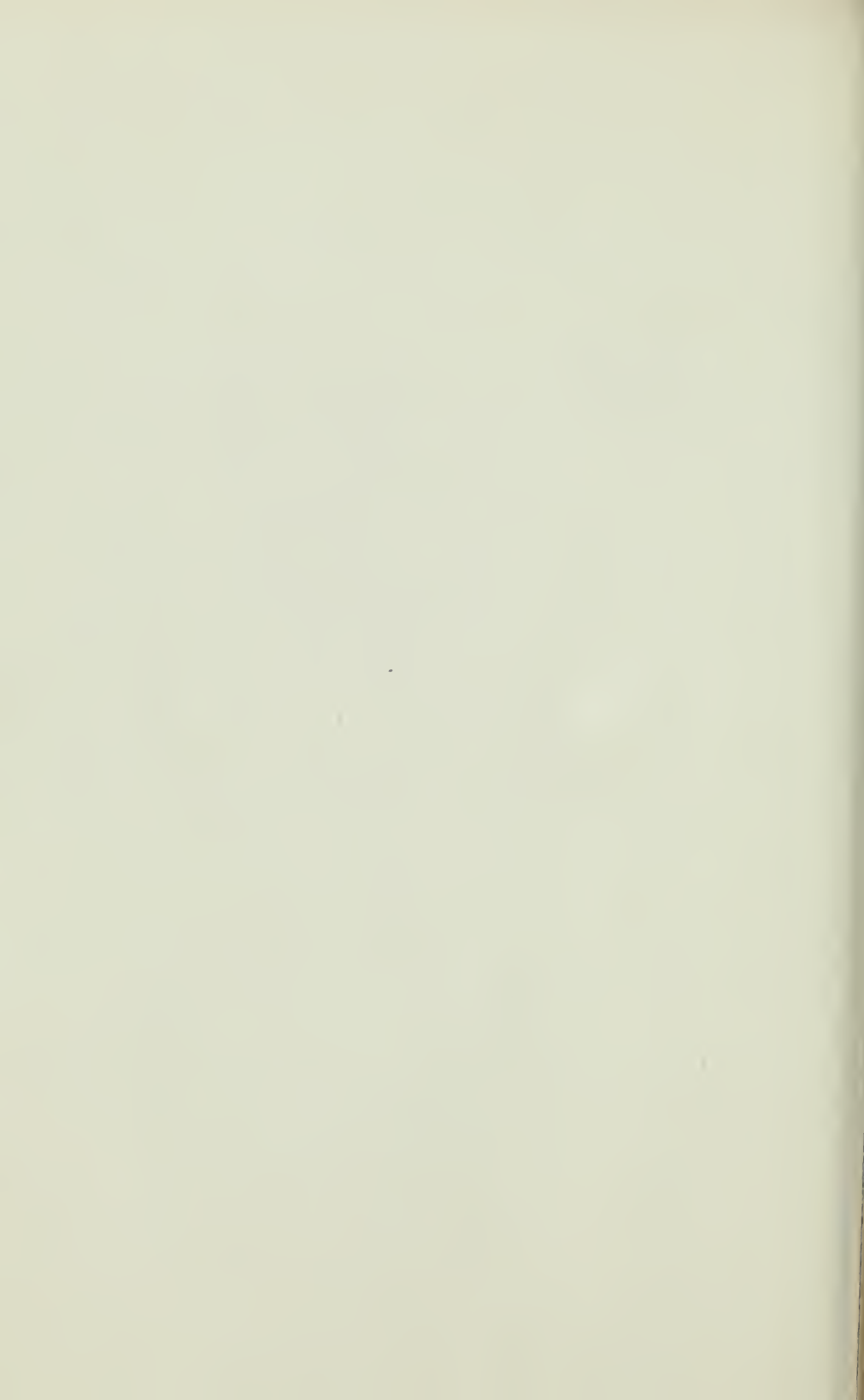
Transcript of Record.

Upon Appeal from the United States District Court for
the Territory of Alaska, Third Division.

Filed

SEP 24 1917

F. D. Monckton,
Clerk.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff, and Defendant in Error.

vs.

F. E. WHELPLEY,

Defendant, and Plaintiff in Error.

Names and Addresses of Attorneys of Record.

L. L. JAMES,

Seward, Alaska,

Attorney for Plaintiff, and Defendant
in Error.

DONOHUE & DIMOND,

Valdez, Alaska,

J. LINDLEY GREEN,

Seward, Alaska.,

Attorneys for Defendant and Plaintiff
in Error. [1*]

*In the District Court for the Territory of Alaska,
Third Division.*

S—88 now 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Complaint.

Now comes plaintiff and complains against defendant, and for cause of action alleges:

*Page-number appearing at foot of page of original certified Transcript of Record.

I.

That plaintiff is a resident of Sand Point, Territory of Alaska, within the Third Judicial Division thereof.

II.

That Little Koniuji Island of the Shumagin Group, situate within the Third Judicial Division of the Territory of Alaska, is, and at all times herein mentioned was, the property of the United States of America.

III.

That plaintiff, on the first day of July, 1914, became, and ever since has been, and now is, the owner of a leasehold estate, by virtue of a lease from the United States of America, in and to the whole of said Little Koniuji Island. A copy of said lease is hereto attached and made a part hereof.

IV.

That the duration of said leasehold estate is for a period of five years, commencing on the first day of July, in the year 1914, and terminating on the thirtieth day of June, in the year 1919.

V.

That on or about the fifth day of November, 1915, plaintiff stocked said Island with seven pair of blue foxes, and placed a keeper in charge thereof. [2]

VI.

That defendant on or about the sixteenth day of December, 1915, entered upon said island in company with John Gardner, Conrad Syvertsen, Gavin Steward, and John Pullatoff, without the consent of the plaintiff, and trapped many of the said foxes;

and appropriated them to his own use, to the great damage of the plaintiff; and on the nineteenth day of December, 1915, said defendant landed again on said island and trapped and appropriated many of said foxes to his own use, and without consent of plaintiff, and to plaintiff's great damage, and on many occasions thereafter, too numerous to mention, defendant and his agents have come on said island without plaintiff's consent, and have trapped foxes thereon, and defendant has appropriated the same to his own use; and said defendant threatens to repeat said trespasses, and threatens to injure plaintiff if plaintiff in any wise interferes with said trespasses of defendant.

VII.

That defendant first entered on said island contrary to the rights of the plaintiff, on or about the month of September, 1914, and trapped approximately thirty-five pair of blue foxes, and appropriated the same to his own use to the great damage of the plaintiff, said foxes being on said island when leased as aforesaid by plaintiff.

VIII.

That plaintiff is deprived of all use of said island by reason of said trespasses, and said threats of injury; and is wholly without means of ascertaining the number and value of the foxes so trapped and appropriated by said defendant; and will ever be unable to determine the damage of future trespasses which are now threatened.

IX.

That defendant will, unless restrained by this

Court, commit other trespasses, and trap other foxes and further deprive the plaintiff from all use of said island, as said defendant now has men in his hire to come and trespass on said island for the purpose of trapping foxes, and so threatens to do. [3]

X.

WHEREFORE, the plaintiff prays judgment: That defendant, his servants, agents, solicitors, attorneys, and all others, acting in his aid or assistance, be restrained by injunction from committing any trespass upon said Little Koniuji Island during the term of said lease of said island to plaintiff; and that an account of the damages occasioned to plaintiff by said trespasses of defendant be taken and judgment therefore be awarded; and for such other relief as is equitable.

L. L. JAMES, Jr.,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,
Third Division,—ss.

Andrew Grosvold, being first duly sworn, says: That he is the plaintiff in this action; that he has read the foregoing complaint, knows the contents thereof, and believes the same to be true.

[Seal]

ANDREW GROSVOLD.

Subscribed and sworn to before me this 20th day of March, 1916.

L. L. JAMES, Jr.,
Notary Public in and for the Territory of Alaska,
Residing at Seward.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 20, 1916. Arthur Land, Clerk. By Robert L. Wever, Deputy.
[4]

**Lease, July 30, 1914, United States of America, etc.,
and A. Grosvold.**

**DEPARTMENT OF COMMERCE AND LABOR.
LEASE.**

WHEREAS, Little Koniuji Island, of the Shumagin group, situate in the Territory of Alaska, is the property of the United States of America, and, by virtue of the Executive Orders of February 2, 1904, and March 25, 1910, is under the control and jurisdiction of the Secretary of Commerce, for the purpose of leasing for the propagation of foxes and other fur-bearing animals, and,

WHEREAS, A. Grosvold, of Sand Point, Territory of Alaska, has offered to lease the same from the United States of America for the purpose stated, for a period of five years beginning July 1, 1914, for the sum of ten hundred and twenty-five dollars (\$1,025), payable at the rate of two hundred and five dollars (\$205) per annum,

NOW, THEREFORE, THIS AGREEMENT, made and entered into this 30th day of July, one thousand nine hundred and fourteen, by and between the United States of America, by Edwin F. Sweet, Assistant Secretary of Commerce (in accordance with and by virtue of the authority conferred by the said Executive Orders of February 2, 1904, and March 25, 1910), of the first part, and the said

A. Grosvold, of Sand Point, Alaska, of the second part:

WITNESSETH, That the said party of the first part, for, and in consideration of the rent, covenants, and conditions herein mentioned, does hereby covenant and agree with the party of the second part to let and lease, and does hereby let, lease, and demise, unto the said party of the second part, for his sole and exclusive use, except as hereinafter specified, the said Little Koniuji Island for the purpose of raising and propagating fur-bearing animals thereon. [5]

TO HAVE AND TO HOLD the premises aforesaid, with all the rights, easements and appurtenances thereto belonging, for the term of five years, commencing on the first day of July, in the year 1914, and terminating on the 30th day of June, in the year 1919.

AND THE PARTY OF THE SECOND PART HEREBY COVENANTS AND AGREES with the party of the first part to hire and lease the premises hereinafter described, with the rights, easements, and appurtenances thereto belonging, of the party of the first part, and does hereby hire and lease the same on the terms and conditions and for the period herein specified.

AND THE SAID PARTY OF THE SECOND PART FURTHER COVENANTS AND AGREES to pay the said party of the first part, as rent for said premises, the sum of ten hundred and twenty-five dollars (\$1,025), said rent to be paid annually in advance, in equal payments, at the rate of two

hundred and five dollars (\$205) per annum,

AND THE SAID PARTY OF THE SECOND PART FURTHER COVENANTS AND AGREES to quit and deliver up the premises peaceably and quietly to the said party of the first part at the expiration of the period specified in like good order and condition as the same are now, reasonable use and wear thereof and damage by fire or other casualty excepted.

AND THE SAID PARTY OF THE FIRST PART FURTHER COVENANTS AND AGREES that if the said party of the second part shall pay the rent and perform the covenants on its part herein contained, the said party of the second part shall peaceably and quietly enjoy the demised premises for the term aforesaid. [6]

AND IT IS FURTHER COVENANTED AND AGREED BY AND BETWEEN THE PARTIES HERETO as follows:

1. That nothing in this lease shall be construed as depriving the Union Fish Company and the Pacific States Trading Company from occupying such portion of Northwest Harbor on said island as they have used for several years or depriving them of the right to operate such stations in the same manner as they have done heretofore.

2. That the said party of the second part shall use the premises hereby leased solely for the purpose of raising and propagating fur-bearing animals thereon, and shall well and truly observe all the conditions, provisions and stipulations of the existing laws and regulations relative to the protection of

fur-bearing animals in Alaska (a copy of which is hereto attached), as well as those that may hereafter be enacted or promulgated for such purpose.

3. That the said party of the second part shall annually, on or before the 30th day of April during the term of this lease, file with the said party of the first part, on blanks to be furnished by the Department of Commerce, a report, under the oath of either himself or his superintendent, manager, or other person having knowledge of the facts, covering his operations on the premises hereby leased, such report to cover the period ending March 31, in each year, and to be in such detail as may be required by the Secretary of Commerce.

4. That the said party of the second part, before shipping any live fur-bearing animal or animals from Alaska, or disposing of any such animal or animals for such shipment, shall secure a permit to do so from the Secretary of Commerce.

5. That the said party of the second part may construct on the premises hereby leased such fences, buildings, corrals, pens, traps or other structures used for raising and propagating [7] fur-bearing animals, also such roads, trails, wharves, piers, and landings as may be necessary or proper for the uses and purposes herein set forth.

6. That nothing herein contained shall grant or convey, or be held to grant or convey, to the said party of the second part, during such time as he may hold said lands under this lease, any right, license, or privilege, to take or remove from said island or any part thereof, any growing timber, stone, clay,

ore, metals, or minerals of any kind or nature whatsoever, provided, however, that said party of the second part may take such timber and stone as may be necessary for immediate use in the building, erection or maintenance of such fences, buildings, corrals, pens, traps, or other structures, roads, trails, wharves, piers and landings, and such timber as may be necessary for fuel or other local use.

7. That the party of the second part shall have the right to remove any buildings or improvements of any kind that may be erected by him at the termination of this lease, but if not removed within nine months after the expiration of this lease, such buildings and improvements will become the property of the party of the first part.

8. That Government officials shall have the right to go upon said island at any time, and agents of the Department of Commerce shall have at all times free and unobstructed access to all corrals, pens, or other structures used for the propagating operations, except at such times as the presence of persons, other than the caretakers, in or about such corrals, pens, or other structures, would be recognized as detrimental to the welfare of propagating operations.

9. That no part of the premises hereby leased [8] shall be sub-let to any other parties; that no member of or delegate to Congress, Resident Commissioner, or other person whose name is not at this time disclosed, or any person other than an American citizen or company, or corporation organized under the laws of a state or territory of the United States shall be admitted to any share or interest

therein or to any benefit therefrom; and that it shall be subject in all respects to the provisions of sections 114, 115 and 116 of the Criminal Code of the United States (35 Stats., 1109) so far as the same may be applicable.

10. That the said party of the first part may at any time during the period of this lease, at its discretion, terminate and cancel the same in case the said party of the second part shall fail to pay the said rental of two hundred and five dollars (\$205) per annum in advance as herein specified, and well and truly perform any and all of the stipulations herein imposed upon him.

IN WITNESS WHEREOF, the parties, to wit, the United States of America, by Edwin F. Sweet, Assistant Secretary of Commerce, party of the first part, and A. Grosvold, party of the second part, have hereunto set their hands and seals the day and year first above written.

UNITED STATES OF AMERICA,
By EDWIN F. SWEET. (Seal)
ANDREW GROSVOLD. (Seal)

[Seal of the Department of Commerce.
United States of
America.]

Signed, sealed and delivered in the presence of
ROBERT H. CLANCY,
(Witness for lessor.)
F. C. DRIFFIELD,
(Witness for lessee.)

Filed for Record at the request of Andrew Gros-

vold this 22d day of February, 1915, at 10 A. M., and recorded on pages 260-261-262-263 of Book 1 Miscellaneous Records of the Unga-Peninsula Recording District.

F. C. DRIFFIELD,
U. S. Commissioner, Ex-Officio Recorder, Unga,
Alaska. [9]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-88.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Demurrer.

Comes now the above-named defendant, and demurs to the complaint of the above-named plaintiff on file herein on the ground that the said complaint does not state facts sufficient to constitute a cause of action.

Dated at Valdez, Alaska, this 27th day of March, 1916.

DONOHOE & DIMOND,
Attorneys for the Defendant.

Filed in the District Court, Territory of Alaska,
Third Division, Mar. 27, 1916. Arthur Lang, Clerk.
By K. L. Monahon, Deputy.

Service of copy of the foregoing demurrer admitted at Valdez, Alaska, this 27th day of March, 1916.

LEANDER L. JAMES, JR.,
Attorney for the Plaintiff. [10]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-88.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Order Overruling Demurrer.

This matter came on regularly for hearing upon the demurrer of defendant to plaintiff's complaint, and the Court having heard the arguments of counsel for the respective parties, and being fully advised in the premises, at this time makes and files this ORDER overruling said demurrer to which ruling of the Court the defendant duly and regularly excepted, and such exception is hereby allowed.

Done in open court this 28th day of March, 1916.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, March 28, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 10, Page No. 41. [11]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Answer.

Comes now the above-named defendant and for answer to plaintiff's complaint admits, denies and alleges as follows:

I.

Referring to the 1st and 2d paragraph of said complaint defendant admits the same.

II.

Referring to the 3d paragraph of said complaint defendant admits that on July 30th, 1914, the lease attached to plaintiff's complaint was executed by one Edwin F. Sweet acting as Assistant Secretary of Commerce of the United States, but defendant denies that the said Edwin F. Sweet had any authority acting as Assistant Secretary of Commerce of the United States, or otherwise, to lease Little Koniuji Island being the property purported to be leased in said alleged lease and defendant denies that plaintiff obtained any rights whatever in and to the possession of said island or otherwise by virtue of said lease.

III.

Referring to the 4th paragraph of said complaint, this defendant admits that said purported lease covers the period from the 1st day of July, 1914, to the 30th day of June, 1919. [12]

IV.

Referring to the 5th paragraph of said complaint this defendant alleges that he has no knowledge or information concerning the matters and things therein stated sufficient to form a belief thereon, and placing his denial upon that ground, denies each and every allegation in said paragraph contained.

V.

Referring to the 6th paragraph of said complaint, this defendant admits that during the month of December, 1915, he, or his employees, were upon said Little Koniuji island and trapped foxes thereon and that he took from said Island 14 fox pelts at said time. He also admits that since said time, to wit, in the month of January and part of February, 1916, he and his employees have trapped foxes on said island and took therefrom 12 fox pelts and alleges that he had a perfect right to trap said foxes and take said pelts for the reason that he holds the legal title to said foxes as will hereinafter more fully appear in the affirmative answer to said complaint.

VI.

Referring to the 7th paragraph of said complaint, defendant denies that at the time therein stated, or at any time since, plaintiff had any right whatever to the possession of said island or that he had any right,

title or interest in and to any of the foxes trapped and taken from said island by said defendant, and defendant alleges that all the foxes taken from said island by him or his employees during the year 1914 were his property and defendant denies that the plaintiff had any interest in or to any of said foxes.

VII.

Referring to the 8th and 9th paragraphs of said plaintiff's complaint, defendant denies each and every allegation therein contained.

For an affirmative and further answer to plaintiff's complaint the defendant alleges: [13]

I.

That the said Little Koniuji island was taken possession of by one Carlson in the year 1894. That at said time said island was wholly unoccupied and unused for any purpose whatever. That the said Carlson stocked said island with blue foxes taken from one of the Aleutian islands and used said island for the purpose of propagating blue foxes. That the said Carlson remained in the continuous possession thereof until the year 1902, during all of which time he occupied and had the exclusive possession of said island and was continuously engaged in the propagating of blue foxes thereon. That in the year 1902 the said Carlson sold to one Lawrence Reid all his right, title and interest in and to the blue foxes, buildings, improvements and equipment used in the propagation of foxes on said island. That the said Lawrence Reid thereupon went into the possession of said island and said foxes, buildings and improve-

ments and equipment thereon and remained in the continuous possession thereof until the 8th day of May, 1913, during all of which time he exclusively occupied said island in the propagation of blue foxes and carrying on upon said island the business of propagating blue foxes. That on the 8th day of May, 1913, this defendant purchased from the said Lawrence Reid all his right, title and interest in and to the blue foxes upon said island and the buildings, boats and equipment thereon used in the propagation of blue foxes for the sum of \$4,000.00. That thereupon the said Lawrence Reid made, executed and delivered to this defendant a bill of sale for said property which said bill of sale was duly recorded on the 8th day of May, 1913, in the Recorder's Office at Unga, Alaska, that being the recording precinct in which said island is situated. That thereafter and on the said 8th day of May, 1913, this defendant went into the possession of said island and into the possession of all the blue foxes thereon and the buildings, boats and equipment thereon used in the propagation of [14] blue foxes and ever since said date has continuously remained in such possession, either in person or by his agents, and now is in such possession.

II.

That thereafter this defendant made an agreement with the Provincial Fox Company, a corporation, whereby the said Provincial Fox Company became the equitable owner of all the property conveyed to him under said bill of sale from the said Lawrence

Reid, conditioned however that this defendant should hold the legal title to all of said foxes and all increase thereof, buildings, improvements and equipment upon said island until the said Provincial Fox Company should settle with and pay this defendant all moneys due him by reason of the maintenance, care and protection of said property, which said balance now due amounts in the aggregate to \$9,000.00. That this defendant is also the owner of one-fifth ($\frac{1}{5}$) of the capital stock of said Provincial Fox Company. That this defendant ever since the 8th day of May, 1913, has been, and now is, the owner of the legal title to all the blue foxes, buildings, improvements and equipment on said island and is entitled to the immediate possession thereof as trustee for the said Provincial Fox Company subject to transferring the said legal title to said Provincial Fox Company upon the said company paying to him the balance now due him from said company as aforesaid. That this defendant has never at any time since obtaining title to said property from the said Lawrence Reid conveyed the legal title to said foxes, and their increase, buildings, boats and equipment to anyone and is now the owner and holder thereof and entitled to the immediate possession of the same.

III.

That the alleged lease under which plaintiff claims right of possession to said island is illegal and void for the reason that the Secretary of Commerce was without authority in law to make said lease. That the United States Government acting, [15]

through Congress has never at any time enacted a law authorizing the Secretary of Commerce or the Secretary of the Treasury or any other person to execute a lease to any one of said island for the purpose of propagating foxes or for any other purpose. That on the 14th day of May, 1898, and for many years prior thereto said island was in the sole possession of this defendant's grantors and to the best information and belief of this defendant said island was not leased or attempted to be leased by the United States Government acting through any of its various departments prior to the 14th day of May, 1898, or at any time prior to the alleged lease under which plaintiff claims.

IV.

That at the time said alleged lease was given to plaintiff and at the time the same went into effect this defendant was the owner of upwards of 100 pair of blue foxes on said island of the value of more than \$15,000.00 and was also the owner of buildings, feed pens and other equipment used by him in the propagation of blue foxes upon said island of the value of more than \$1,500.00. That plaintiff was fully aware of the said property so owned by defendant upon said island and well knew that said defendant could not trap and remove his blue foxes from said island previous to the time of said lease going into effect. That at the time the Secretary of Commerce purported to lease said island this defendant then being in the possession thereof and not desiring to have said possession contested or disturbed bid for said

island under said proposed lease \$200.00 per year and the plaintiff bid for said island \$205.00 per year. That the plaintiff in so bidding and obtaining said lease did so, so this defendant is informed and believes, not for the purpose of propagating and raising blue foxes in good faith upon said island but for the purpose of obtaining the possession of said blue foxes so owned by defendant and thereby depriving said defendant of his property thereon without any compensation [16] whatever, the value of which said property was then about the sum of \$15,000.00.

V.

That as soon as said defendant learned that the Secretary of Commerce proposed to lease said island to the plaintiff herein he went to said plaintiff for the purpose of effecting an amicable understanding with him whereby this defendant might have two years in which to capture and remove his said foxes and improvements aforesaid from said island. That said plaintiff thereupon tacitly agreed with this defendant that he should have 2 years in which to remove his said property from said island but said plaintiff, in violation of said agreement, when this defendant had men upon said island in the months of October and November, 1914, for the purpose of catching said foxes, did by threats and intimidation prevent said employees of defendant from capturing said foxes and this defendant at said time was only able to capture 25 head of foxes. That thereafter, in further violation of said agreement with defendant, in the month of December, 1915, when defendant was attempting to catch and remove his said

foxes from said island plaintiff caused defendant's arrest and thereby prevented this defendant from removing the said foxes from said island. That this defendant now has upon said island upwards of 70 pairs of blue foxes of the value of about \$10,000 and buildings, equipment and household articles of the value of about \$1,000.

VI.

That the only time when said foxes should be taken for their pelts is during the months of November, December, January and February for the reason that at any other time of the year said pelts are worthless for fur and this defendant therefore alleges that he cannot remove all of his said foxes from said island before the month of March, 1917.
[17]

VII.

That said plaintiff never has been, nor is he now, in the possession of said island under said lease or otherwise. That this defendant now is in the possession of said island and he and his grantors have been continuously in possession of said island using and occupying the same for the propagation of blue foxes ever since the year 1894. That this defendant by reason of his previous possession and long previous occupancy of said island for a beneficial purpose is now entitled to the sole and exclusive possession of said island for the purpose of propagating foxes thereon.

WHEREFORE, defendant prays this Honorable Court as follows:

First. That the plaintiff take nothing by reason of his complaint.

Second. That the alleged lease of plaintiff set out in his said complaint be declared null and void and of no force and effect and that said plaintiff acquire no right to the possession of said island thereunder.

Third. That the defendant be declared to be entitled to the sole and exclusive possession of said island for the purpose of propagating foxes thereon.

Fourth. That the defendant be declared to be the owner of all the blue foxes now on said island and buildings, improvements and equipment thereon heretofore used and now being used by the defendant in the propagation of foxes on said island.

Fifth. For such other and further relief as the Court may deem equitable and for defendant's costs and disbursements incurred herein.

DONOHOE & DIMOND,

Attorneys for Defendant. [18]

United States of America,
Territory of Alaska,—ss.

F. E. Whelpley, being first duly sworn, deposes and says; I am the defendant named in the foregoing answer and I have read the same and know the contents thereof and the same is true as I verily believe.

[Notarial Seal]

F. E. WHELPLEY.

Subscribed and sworn to before me this 28th day of March, 1916.

ANTHONY J. DIMOND,

Notary Public for Alaska.

My commission expires March 13, 1917.

Filed in the District Court, Territory of Alaska, Third Division, April 12, 1916. Arthur Lang, Clerk. By Chas. A. Hand, Deputy.

Due service of the foregoing answer is hereby accepted this 28th day of March, 1916.

LEANDER S. JAMES JR.,
Attorney for Plaintiff. [19]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Reply.

Now comes plaintiff and replies to the answer, and the further and affirmative answer of defendant as follows:

I.

Referring to paragraph five of defendant's answer, plaintiff denies that defendant holds or ever did hold the legal title to the foxes and fox pelts mentioned in said paragraph, and asserts that said foxes were the property of the plaintiff when taken by defendant as admitted in said paragraph.

II.

Referring to paragraph six of defendant's answer plaintiff denies that defendant was the owner of the

foxes taken from Little Koniuji Island by defendant since the month of September, 1914, and asserts that all such foxes were the property of this plaintiff.

III.

Referring to paragraph one of defendant's further and affirmative answer, plaintiff denies that one Carlson took possession of Little Koniuji Island in 1894 and remained in possession thereof until 1902, but, to the contrary, asserts that said island was duly and regularly leased by the United States Government during the years 1896, 1897, 1898, 1899 to Rudolph [20] Newman, and in the year 1900 to P. K. Guild (Estate of R. Newman); plaintiff denies that defendant has been in possession of said Little Koniuji Island since the first day of September, 1914. Concerning the other matters mentioned in said paragraph plaintiff alleges that he has no knowledge or information concerning the matters and things therein stated sufficient to form a belief thereon, and placing his denial upon that ground, denies each and every allegation in said paragraph contained.

IV.

Referring to paragraph two of defendant's further and affirmative answer plaintiff denies that defendant is the holder of the legal title to all the blue foxes, buildings, improvements and equipment on said Little Koniuji Island as trustee for the Provincial Fox Company, or otherwise; and plaintiff denies that defendant is entitled to the immediate possession thereof as trustee for the Provincial Fox Com-

pany, or otherwise, or at all; but, to the contrary, asserts that he is the owner of all said property on said island. Referring to the other matters set forth in said paragraph plaintiff alleges that he has no knowledge or information concerning the matters and things therein stated sufficient to form a belief thereon, and placing his denial upon that ground, denies each and every allegation in said paragraph contained.

V.

Referring to paragraph three of defendant's further and affirmative answer plaintiff denies that his right of possession to Little Koniuji Island is illegal and void for the reason that the Secretary of Commerce was without authority in law to make said lease, or otherwise; and asserts that said lease was given under proper and legal authority. [21]

VI.

Referring to paragraph four of defendant's further and affirmative answer, plaintiff denies that defendant was the owner of upward of one hundred pair of blue foxes on Little Koniuji Island, or any other number of foxes, and denies that the defendant was the owner of buildings, feed pens, and other equipment on said island; and plaintiff asserts that he was and is the owner of all buildings, feed pens and other equipment on said island; plaintiff denies that he bid for said Little Koniuji Island in bad faith, or for any of the reasons alleged in said paragraph by defendant. Referring to the other matters mentioned in said paragraph, plaintiff denies each

and every allegation therein contained.

VII.

Referring to paragraph five of defendant's further and affirmative answer, plaintiff denies that he ever entered into any amicable understanding, or at all, whereby defendant was allowed to remove any foxes from Little Koniuji Island, and plaintiff denies that he ever in any manner, or at all, recognized any right of defendant in and to any property of whatever nature on said island; and plaintiff denies that defendant owns any property on said island of any kind; plaintiff admits that he caused the arrest of said defendant for trespassing on said Little Koniuji Island.

VIII.

Referring to paragraph six of defendant's further and affirmative answer, plaintiff denies each and every allegation thereof.

IX.

Referring to paragraph seven of defendant's [22] further and affirmative answer, plaintiff denies that defendant and his grantors have been in possession of Little Koniuji Island continuously or otherwise, since the year 1894; and denies that defendant has been in possession of said island since September, 1st, 1914, but that defendant has merely committed trespasses thereon contrary to the rights of plaintiff; and plaintiff asserts that he has been in the continuous possession of said island since the first day of September, 1914, paying a rental of two hundred and five dollars (\$205.00) per annum there-

fore, which said rental has been accepted by the Government of the United States.

WHEREFORE plaintiff prays that defendant have nothing by reason of his answer and further and affirmative answer, and that the prayer of plaintiff's complaint be granted.

JAMES & WOLLEY,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska, Third Division,—ss.

L. L. James, Jr., being first duly sworn, says, that he is one of the attorneys for the plaintiff in the above-entitled cause; that he has read the foregoing Reply, is familiar with the contents thereof, and believes the same to be true; that the reason he makes this verification is that the plaintiff, Andrew Grosvold, is at this time residing at Sand Point, Territory of Alaska, and unable to verify this Reply within the time as provided for under Rule twenty-six of the Rules of the District Court for the Territory of Alaska, Third Division; that he has been duly authorized by said plaintiff to make the verification hereto.

[Notarial Seal]

L. L. JAMES, JR.

Subscribed and sworn to before me this 22d day of May, 1916.

WM. D. COPPERNOLL,
Notary Public in and for the Territory of Alaska,
residing at Seward therein.
Commission expires, Dec. 12, 1918.

Filed in the District Court, Territory of Alaska,
Third Division, May 22, 1916. Arthur Lang, Clerk.
By Robert Wever, Deputy. [23]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Transcript of Evidence.

BE IT REMEMBERED, that the above-entitled
cause came on duly and regularly to be heard on
Saturday, July 8, 1916, at 10 o'clock A. M., before the
Honorable FRED M. BROWN, Judge of said court:

The plaintiff herein being represented by his at-
torneys and counsel, Messrs. James & Woolley.

The defendant herein being represented by his at-
torneys and counsel, Mr. J. Lindley Green and
Messrs. Donohoe & Dimond.

Opening statements were made to the Court by
Mr. James on behalf of the plaintiff and by Mr.
Dimond on behalf of the defendant.

WHEREUPON the following additional proceed-
ings were had and done, to wit: [24]

GROSVOLD v. WHELPLEY.

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[25]

Testimony of Andrew Grosvold, in His Own Behalf.

ANDREW GROSVOLD, the plaintiff, called and sworn as a witness in his own behalf, testified as follows:

Direct Examination by Mr. JAMES.

Q. State your name and residence?

A. Andrew—

Mr. GREEN.—At this time we wish to object to the introduction of any evidence in this case for the reason that the lease was granted without any authority of law and for the further reason that if there was any authority of law for granting the lease on these islands that the secretary of commerce has exceeded his authority in granting the lease in the manner and form in which he did and for that reason the lease is void and he has no rights; and for the further reason that the proper form of action has

(Testimony of Andrew Grosvold.)

not been brought, that this is an action to quiet title, when our statute provides that in bringing an action to quiet title the person must be in possession and it is necessary to plead that possession; in this case he has not shown such possession as would entitle him to bring an action to quiet title—ejectment would be the proper action.

Mr. WOOLLEY.—This is not an action to quiet title, but for a permanent injunction.

The objection was by the Court overruled and defendant allowed an exception to the ruling.

Mr. JAMES.—You may answer the question.

A. Andrew Grosvold is my name; I reside at Sand Point, Alaska.

Q. You are the plaintiff in the action before the Court, Grosvold versus Whelpley?

A. Yes, sir. [26]

Q. Do you know the defendant, F. E. Whelpley?

A. I know him by sight.

Q. How long have you known the defendant?

A. Since the latter part of 1912.

Q. Where did you first meet the defendant?

A. At Sand Point.

Q. And what was the business of the defendant at that time?

A. He was in the fox business, as far as I understood.

Q. Did you have any business relations with the defendant?

A. No, none whatever,—not at that time.

(Testimony of Andrew Grosvold.)

Q. Did you at any subsequent time have any business with him?

A. Yes, the following year we had,—1913.

Q. About what time in the year 1913, do you remember on or about what time?

A. The latter part of May or the first part of June.

Q. And what was the nature of that business?

A. He secured an option on two of my fox islands out there, to buy my right to the islands.

Q. He secured that for himself, did he?

A. Acting as agent for the Fundy Fox Company.

Q. And so represented to you, that he was acting as agent? A. Yes, sir.

Q. What islands were those he took the option on?

A. The Island of Chernabura, East and Bird Island.

Q. Did you at any time submit a bid to the United States Government, to the Department of Commerce & Labor, for a lease to the Little Koniuji Island?

A. Yes, sir.

Q. I show you this lease (handing witness paper) and ask you if that is your signature and the lease that resulted from [27] the bid? Look at the signature on the last page and tell us if that is your signature. A. Yes, this is my signature.

Mr. JAMES.—We ask the Court to take judicial knowledge of the signature of Edwin F. Sweet, acting for the Department of Commerce & Labor in executing this lease and we offer it in evidence.

Mr. GREEN.—We object to its introduction in evidence for the reason that the lease is void in that

(Testimony of Andrew Grosvold.)

there is no law whereby that department is given the privilege of granting leases and if the Court should even find that there was some statutory authority for it, that this lease is not a lease that should be granted and that the department had no authority to grant a lease in the manner in which they granted this, by advertising for bids, crippling and interfering with an industry which the statute was intended to foster and encourage.

The COURT.—I am not assuming at this time to pass on that question, that is really the question to be determined in the trial of this case. The objection will be overruled.

Defendant allowed an exception to the ruling.

The lease is admitted in evidence, marked Plaintiff's Exhibit "A"—copy is attached hereto and made a part hereof.

Q. What was the rental of that property, the Little Koniuji Island—how much per year?

A. The department offered the lease for at least \$200 per year.

Q. And what was your bid for it? A. \$205.

Q. Did you pay that rent?

A. I paid that rent to the department.

Mr. JAMES.—We offer this receipt in evidence, being a receipt from the department for the first year's payment on this lease. [28]

Mr. GREEN.—We make the same objection.

Objection overruled; defendant allowed an exception.

The receipt is admitted in evidence, marked Plain-

(Testimony of Andrew Grosvold.)

tiff's Exhibit "B"—copy is attached hereto and made a part hereof.

Q. Did the defendant, F. E. Whelpley, at any time have possession of Little Koniuiji Island?

Mr. GREEN.—We object; he has not shown whether or not he is prepared to answer the question; he has not laid the foundation.

By the COURT.—You may ask him if he knows—objection overruled.

Q. Answer the question.

A. I understood that he had possession of the Island, acting for the Fundy Fox Company.

Mr. GREEN.—We move to strike the answer as not responsive to the question.

Motion denied; defendant excepts.

Mr. GREEN.—Also, it is not shown he knows.

The COURT.—Do you know that he was over there? That Mr. Whelpley was in possession there?

A. Yes, your Honor, acting for the Fundy Fox Company.

Objection overruled; defendant excepts.

Q. Did you ever know a man by the name of Chesley D. Colwell? A. Yes.

Q. When did you first meet Mr. Colwell?

A. I met him the 18th of March, 1914.

Q. Where did you meet him? A. Sand Point.

Q. In what connection did you meet him?

A. He was introduced by letter from the Fundy Fox Company as their agent in their Alaska business and also held a letter of introduction from the company to present to me. [29]

(Testimony of Andrew Grosvold.)

Mr. JAMES.—We offer in evidence these letters from the Fundy Fox Company to Andrew Grosvold.

Mr. DIMOND.—We object to them as incompetent, irrelevant and immaterial and not having been signed. And there is no proof offered that this company is in existence and they cannot be introduced under the law to bind the defendant. In the first place it does not identify this particular island or have any reference to it and in the second place, there is no testimony that there is any such company in existence as the Fundy Fox Company—it is incompetent evidence.

The COURT.—I don't know what its effect or weight may be at this time. * * These rulings will be considered as pro forma rulings and at the conclusion of the case, any motion to strike testimony that is not relevant may be made and will be granted. At this time I cannot see the relevancy of it, neither can I say it has no purpose or relevancy. The objection will be overruled and exception allowed.

The letters are admitted as Plaintiff's Exhibits "C" and "D"—copies are attached hereto and made a part hereof.

Q. Did you have any conversation with Mr. Colwell regarding the Little Koniuji Island?

A. Yes, sir.

Q. State what that conversation was?

Mr. DIMOND.—We object to that on the ground that there has been no proof offered in evidence that Mr. Colwell had any right whatever to bind this de-

(Testimony of Andrew Grosvold.)

fendant or was in any manner an agent of the defendant.

The COURT.—It seems as though this was a little bit anticipating the defense. If you reply upon the lease here, it would seem that would be sufficient until there was some evidence offered on the part of the defendant. [30]

Mr. WOOLLEY.—We are willing to rely upon our lease as to the Island but as to the foxes on the Island, we want to show that Grosvold acquired title through a subsequent agreement with Colwell. * *

Mr. GREEN.—We would like to object on the same grounds, that it not shown that Colwell has anything to do with the Island.

Objection overruled; defendant allowed an exception.

Q. You may proceed.

A. After Mr. Colwell had presented his letter of introduction from the company, the next thing we took up was the time I would give him to remove the animals that was on the island, left on the island. So as I didn't know how many animals there was on the island or if there was any, I couldn't stock this island from my own islands or any other islands before the first part of September, consequently, I extended the time for him to remove whatever foxes was on the island until September first, 1914.

Q. What island do you refer to?

A. Little Koniuji.

The COURT.—You gave him until September, 1914?

(Testimony of Andrew Grosvold.)

A. September first, 1914—to remove whatever stuff they had on the island.

The COURT.—How long before that was this conversation?

A. This was on the 18th of March, 1914.

Q. Did you have any conversation with him relative to the consideration for allowing him that time, which was an encroachment upon your lease?

A. Part of that conversation and agreement was that I give him the privilege to communicate with the authorities at Washington—if, to the first of September was not sufficient for him that he could get further time, it would be agreeable as long as my lease could commence from the date they were ready to vacate [31] the island, whether it was one year or more. For this courtesy whatever was left on the island after he vacated was to become my property—that was the agreement between us.

Q. You were allowing him until the first of September to take off his personal property from Little Koniuji and as a consideration for the allowance, he agreed to give you the remaining foxes and personal property on the island?

A. Whatever was left on the island that had been belonging to the Fundy Fox Company was to become my property at the end of that term, on the first of September, 1914.

The COURT.—Was he to have the right to remove any of the structures or improvements?

A. I didn't restrict him from removing anything that belonged to him.

(Testimony of Andrew Grosvold.)

Q. And if he moved anything, there wouldn't be anything left for you—Was there an agreement that he was to leave anything? A. No.

Q. He didn't have to leave anything?

A. There was no agreement for him to leave anything, but whatever he did leave, was to fall to me, as my personal property.

Q. That would mean foxes as well as—

A. That would mean foxes or anything that was left on the island.

Q. Did Mr. Colwell go into possession of Little Koniuji Islands?

A. Yes—he went down as soon as he could get there with his little boat called the *Elvira*.

Q. Do you remember about what time he went into possession?

A. About three or four days afterwards—that would be about the 23d of March, something like that.

Q. He went into the possession of Little Koniuji?

A. Yes, sir.

Q. To your knowledge did he place any one on the island, in charge? [32]

A. Yes, he placed a native family there, in charge.

Q. Do you know what transpired during the time you mentioned that he was to have possession, until he removed his personal property, that is, from this time in March until the first of September? Do you know of your own personal knowledge what particular work Mr. Colwell did or directed to be done on the Little Koniuji Island?

(Testimony of Andrew Grosvold.)

A. Well, he put quite a number of trappers on there to trap all the old foxes he possibly could—he put to my knowledge at least seven parties trapping.

Q. Do you remember who some of those parties were?

A. Yes, most of them—the natives names I don't know.

Q. State the names you know, you recollect, at this time?

A. William Gardner of Unga is one and Nicolai Polukoff (?) and Nicolai Stiklamikoff (?) and Andrew Olsen and then there were two natives, I don't know their names, and there was the captain of the launch Elvira, Otto Hilstrom.

Q. That is all you remember?

A. That is all I remember, yes.

Q. Do you know how many foxes Mr. Colwell or his agents took off of Little Koniuji Island during this six-month period you allowed them to withdraw their property from the island?

A. They took off 37 pair—they brought them to Unga.

Q. When did they bring them to Unga?

A. They left the Island the 31st of August and arrived down there that same evening.

Q. Leaving the island the 31st of August was according to the agreement you made with Mr. Colwell?

A. According to the agreement with me he vacated the island the 31st of August.

Q. Did you proceed to take possession of the island

(Testimony of Andrew Grosvold.)

immediately [33] after that time?

A. The first of September I went on the island.

Q. What year was that? A. 1914.

Q. That was following the day that Colwell vacated the premises?

A. Yes, sir; that was the following day.

Q. Who did you put in charge down there at that time, representing yourself?

A. Charles Christianson.

Q. From the time you took possession, that is, from the first day of September, up to and including the present time, have you always had some one representing you in possession of Little Koniuji Island?

A. Always.

Q. Please name the parties who were representing you on Little Koniuji Island?

A. Charles Christianson staid from the first day of September to the 4th day of December, 1914. From the 4th day of December to the 15th day of August, 1915 I had Vacili Dekennikoff (?) in charge and from then to the present time I got a man by the name of George Elmo and I had a man by the Name of Albert Catlin, but he was chased off and I got Pete Johnson at the present time—Pete Johnson and George Elmo.

Q. They are on the islands at the present time?

A. Yes, they are on the islands at the present time.

Q. Was your occupation of Little Koniuji Island ever disturbed after you took possession on the first day of September, 1914? A. Yes.

(Testimony of Andrew Grosvold.)

Q. At what time was it disturbed and what was the disturbance?

The COURT.—Fix the date first, if anybody went on there.

Q. What date, if any, did any one trespass on that island? [34]

A. About the 26th of March, 1914.

Q. You didn't take possession until the first day of September, 1914?

A. It is 1915, I am talking about.

The COURT.—The 26th of March, 1914?

A. 1915—on the 22d of September, 1915.

The COURT.—You started out by saying the 26th of March, 1914.

A. I got a little mixed.

The COURT.—What did you intend to say?

A. The 22d of September, 1914.

Mr. JAMES.—That was a short time after you took possession, after Mr. Colwell vacated the island?

A. Yes, that was a short time after.

The COURT.—Who went on there?

A. Mr. Whelpley with some of his men went on there, men he had hired.

Examination continued by Mr. JAMES.

Q. State if you know what they did while on the island. A. They trapped live foxes.

Q. How many?

A. They trapped live foxes; as far as I am told by my men on the island they trapped 25 live foxes.

Q. Previous to the time of this trespass that you have just mentioned, did the defendant F. E. Whelp-

(Testimony of Andrew Grosvold.)

ley appear in your office at Sand Point? A. Yes.

Q. A few days before the trespass?

A. Either on the 18th or 20th.

Q. Of what month?

A. Of September, 1914. [35]

Q. State what conversation took place between yourself and Mr. Whelpley, and the names of any other parties present?

A. Mr. Whelpley came into my office and notified me that he was sending some men down on the Island of Little Koniuji to trap the foxes that was there, and if I interfered with him or any of his men or put any hand on any of them, he would send me over the road.

Q. And what did you say to him?

A. He brought a witness along, John Gardner; I didn't reply anything, except I ordered him out of my office, as I didn't have time or wasn't in condition to answer him at that time.

Q. Why were you not in condition to answer him?

A. That was during the time of my family trouble.

Q. Did you ever plant any blue foxes on Little Koniuji Island? A. Yes, I did.

Q. About what date?

A. That was 1915, on the 18th day of October, and also the 25th of October.

(By the COURT.)—Q. How many on the 18th of October? A. We planted nine foxes.

Q. And what other date?

A. The 25th of October.

Q. October 25th, how many? A. Seven.

(Testimony of Andrew Grosvold.)

Q. Where did you get those foxes, where did you bring them from, when you planted them on Little Koniuji Island?

A. I brought fifteen of them from Chernabura, East, and one from Sand Point.

Q. Who planted them? Who did you employ for the purpose of planting these blue foxes on Little Koniuji? [36]

A. My boy Sam, my stepson Sam, and a man named John McChristensen.

Q. After you took possession of Little Koniuji Island, did you place any signs or notices on the island?

A. Yes, I placed three signs on the island.

Q. State what those signs referred to.

A. At the same time that I planted these sixteen foxes I put up three signs stating that this island was leased and operated by A. Grosvold of Sand Point, and any trespass would be prosecuted according to law.

Q. How large were those signs?

A. They were about twelve by eighteen.

Q. Inches? A. Inches, yes.

Q. Were they framed?

A. They were framed—printed in large letters and framed, and covered with glass.

Q. How many of those notices did you place around Little Koniuji Island? A. Three.

Q. Did you place the notices at what were actually used as landing points on the island?

A. Yes, one near the front of the house, one in Sandy Cove, and one in Northwest Harbor.

(Testimony of Andrew Grosvold.)

(Questions by the Court.)

Q. What is the size of this island?

A. We call it about seven by three.

Q. Seven miles by three?

A. Yes, by three wide.

Q. What is the nearest island to it?

A. The nearest is Big Koniuji. [37]

Q. How far is that?

A. It is probably a mile and a half, or even closer.
not over a mile, I don't think.

Q. Can the foxes leave the island and travel to the other one? Could they swim a mile?

A. Not as far as I know—I never heard of it.

(By Mr. JAMES.)

Q. Referring back to the time that Mr. Colwell took possession under the verbal agreement you mentioned, was Mr. Whelpley ever on the island during that time that Mr. Colwell was in possession?

A. Not to my knowledge.

Q. Are the signs you mentioned, that were placed on the island, still there? A. No.

Q. What became of them?

A. Whelpley smashed them up.

Q. After you took possession on the first of September, 1914, of Little Koniuji Island how many times did Whelpley or his agents come on the island, do you know? A. In the spring again.

Q. Of what year? A. 1916.

Q. Did they trap foxes at that time?

A. They trapped foxes, yes.

Q. How many foxes, all told, did Mr. Whelpley

(Testimony of Andrew Grosvold.)

trap from the time you took possession on the first day of September, 1914, to date?

A. Of course, I couldn't say, except from hearsay and what my agents told me—about 39 foxes, I should judge, altogether, as near as I can recollect.

Mr. JAMES.—That is all at this time. [38]

Cross-examination by Mr. DIMOND.

Q. How long have you been engaged in the business of raising foxes? A. Since 1901.

Q. You are quite familiar with the methods and the proper way to raise them, are you? Have you been engaged in it personally, or through your agents only.

A. I always had somebody to do it for me; it was under my supervision.

Q. Foxes are rather difficult to catch, are they not?

A. It depends on those who are trained to catch them.

Q. With people who are familiar with them, to whom they are used or accustomed, it is not so difficult, that is, if a man remains on the island as keeper and knows how to handle them, he can get them pretty easily, while a stranger couldn't—is that what you mean to say?

A. It is a hard matter to explain. If foxes are kept fed and not disturbed too much, they are pretty easy to catch, but if they are not fed and just drift the same as any other wild animal, why they are as cute as any other foxes.

Q. Now, as a matter of fact, isn't it practically impossible to catch all of the foxes off of any of these

(Testimony of Andrew Grosvold.)

islands in a single trapping season?

A. Well, it is so long since I followed trapping that I don't think I am an authority on that.

Q. Where is Mr. Colwell now, do you know?

A. I don't know where he is—I hear that he is in Portland, Oregon.

Q. You know that he was in Alaska quite recently, don't you?

A. I didn't know that he was in Alaska; I haven't kept track of him since he left up there,—we have had no communication.

Q. Didn't you go on Little Koniuji Island about the second day of August, 1914, when Mr. Colwell was absent, and order his men not [39] to trap any more foxes, and did you not at that time stop them from trapping foxes? A. I did not.

Q. Were you not on the island at that time?

A. I was on the island at that time.

Q. And did you not tell Mr. Colwell's men not to trap any more foxes at that time?

A. I did not.

Q. And you absolutely deny stopping or attempting to stop Mr. Colwell's men from trapping foxes at any time during August, 1914?

A. I do absolutely deny it.

Witness excused.

Mr. WOOLLEY.—We have some depositions which we wish to read in evidence.

Mr. James reads the depositions of A. S. Catlin, Charles Christiansen, S. O. Casler and Hjalmar

Christiansen. Copies of said depositions are attached hereto and made a part hereof.

Mr. JAMES.—We will now call Mr. Hilstrom.

Testimony of Otto Hilstrom, for Plaintiff.

OTTO HILSTROM, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. JAMES.

Q. State your name and residence and occupation.

A. Otto Hilstrom; Valdez, Alaska; am a blacksmith in Valdez.

Q. Do you know the plaintiff in this case?

A. Yes, sir.

Q. Did you know one, Chesley D. Colwell?

A. Yes, sir.

Q. When and where did you first know Mr. Colwell? [40] A. Valdez.

Q. How long ago?

A. It was in February, 1914.

Q. What was Mr. Colwell's business at that time?

A. He said he represented the Fundy Fox Company.

Q. Did you have any business relations with Mr. Colwell?

A. Not until that time—he bought a launch here and I ran the launch for him.

Q. State to the Court what your connection with Mr. Colwell was.

A. I was in charge of the launch until we got up to Koniuji Island and back—did some running around up there, too.

(Testimony of Otto Hilstrom.)

Q. What time did you arrive at Little Koniuji Island, or rather at Unga?

A. I think it was the 19th of March.

Q. What year? A. 1914.

Q. Did you meet Captain Grosvold while you were on that trip to the westward?

A. Yes, I did, but not that time, not that day.

Q. Did you take Mr. Colwell over to Sand Point that same day that you arrived at Unga?

A. Over to Cold Harbor.

Q. You didn't go to Sand Point that day?

A. I think we called in at Sand Point that same night, but I didn't go ashore, I didn't leave the boat.

Q. Did you take Mr. Colwell to Little Koniuji Island? A. Yes, I did.

Q. Do you remember about what time or the day you landed there?

A. It was a couple of days after,—I think it was two days after we landed at Unga. [41]

Q. That would be about the 21st of March?

A. Yes, sir; that would be about the 21st of March, 1914.

Q. Mr. Colwell was with you on that trip?

A. Yes, sir.

Q. Down to Little Koniuji Island?

A. Yes, sir.

Q. Did Mr. Colwell place any one in charge of the island at that time?

A. I don't remember at that time whether he did or not, I can't say.

Q. Do you remember whether any one went down

(Testimony of Otto Hilstrom.)

on the boat with you at that time?

A. Yes, sir; Billy Gardner—I think he told Billy Gardner at that time to be in charge, too.

Q. What were your duties?

A. Taking care of the boat.

Q. Do you know whether or not, at any time between the time you mention when you arrived there, the 19th of March, 1914, and the first day of September, 1914, whether any foxes were taken from Little Koniuji Island by Mr. Colwell or his agents?

A. Yes, there was.

Q. How many foxes did they take off?

A. I think it was 74, something like that.

Q. You know the defendant, F. E. Whelpley?

A. Yes, sir.

Q. Did you ever see Mr. Whelpley on Little Koniuji Island from the time that you first arrived there, in March, 1914, up to and including the first day of September, 1914, that is, during the time that Mr. Colwell's men were trapping?

A. I don't remember that.

Q. Do you remember seeing Mr. Whelpley on the island during that time? [42]

A. I don't remember it.

Q. How often were you at the island?

A. Well, I was there until the latter part of June, I think,

Q. From March until June? A. Yes, sir.

Q. You were there continuously?

A. Not exactly, a time or two I went to Unga and got mail, etc., and went back again and then I went to

(Testimony of Otto Hilstrom.)

Nushagak and was gone 42 days, to Nushagak and back.

Q. At what time did you arrive back?

A. I think it was the 23d of July I arrived back.

Q. Do you know anything about the trapping of foxes on that island during the time that Mr. Colwell's men trapped on Little Koniuji Island?

A. Yes, I was there.

Q. And did I understand you to say that they caught 74 foxes?

A. 74, that is as well as I can remember, yes.

Q. In your opinion, how many foxes would you say there was on the island?

Mr. DIMOND.—We object to that unless the witness shows that he is qualified to answer.

The COURT.—Yes, you better find out whether he knows or has any means of forming an opinion.

The WITNESS.—I couldn't say.

Q. How many foxes were caught, the last week, for instance, the last seven or eight days—how many foxes were caught during that time?

A. I don't remember exactly, I think about six or eight the last few days—I have forgotten whether he set the trap on the 23d or 24th, I don't remember exactly; six or eight foxes they caught then. [43]

Q. The last seven or eight days, as I understand you, only six or seven foxes were caught—is that what you stated? A. Something like that.

Q. What was the opinion of the trappers as to the number of foxes remaining on the island at the time

(Testimony of Otto Hilstrom.)

you completed your trapping on the 31st day of August?

Mr. DIMOND.—We object to that as hearsay.

The COURT.—The objection will be sustained. But if from his talks with the men there he gained a general knowledge of the situation he might give his own opinion, if he is able to form one. It is not necessary he should go and count them, but if he formed an opinion, reasonably based on familiarity with the facts.

Q. How many men were employed out there during that time in trapping the foxes?

A. I think it was eight.

Q. Do you remember their names, or any of them?

A. Yes—not their full names. Olsen was the only white man that was employed there.

Q. Do you remember whether or not a man named Gardner was there?

A. Yes, William Gardner was there.

Q. Did you know how many foxes were caught from time to time—did they report to you in any way? A. Oh, yes.

Q. Did you have charge of the foxes as they were caught?

A. No, just helping to look after them, etc.

Q. Did you have conversations from time to time with the trappers regarding the catching of the foxes? A. Yes, right along.

Mr. JAMES.—We renew our question as to how many foxes, in witness' opinion, as compared with the

(Testimony of Otto Hilstrom.)

total number of foxes [44] on the island, were caught?

Mr. DIMOND.—We object, that he is not qualified.

The COURT.—If you can state from your general knowledge of this situation, being with the men and helping them prepare them, etc., if you can form an opinion as to the number of foxes on the island, you may say so.

Defendant allowed an exception to the ruling.

A. They caught as many on the last day as they did the first, about the first ten days, until the tenth, and they stopped on the 23d, and then they didn't get more than six.

Q. What proportion of the foxes would you say that were caught were caught during that month—what proportion of the total number of foxes on the island, that is, in your opinion, did you catch—a quarter of them or half of them or what did you catch?

A. I don't know—about half, I suppose.

Q. Did Mr. Colwell tell you that the Funtly Fox Company were in possession of Little Koniuji Island at that time for the purpose of trapping?

A. Well, he said he was in charge—that is as far as I know.

Q. Did he ever mention the Fundy Fox Company to you? A. Yes, he did.

Q. What were the duties of yourself when you were on the launch and on the island—what were your duties, for the company, or for Mr. Colwell?

A. To look after the launch, go down and get pro-

(Testimony of Otto Hilstrom.)

visions and mail, etc.

Q. You were supposed to look after the foxes and all that sort of thing?

A. If they wanted anything at Unga for the natives or anything, I was to look after them.

Mr. JAMES.—That is all. [45]

Cross-examination by Mr. DIMOND.

Q. Did Mr. Colwell say anything to you about the Provincial Fox Company during this time?

A. Yes.

Q. What did he say?

A. He said it was a different company and they handled the blue foxes, he said.

Q. What kind of foxes were they on Koniuji Island? A. Blue.

Q. Was there any other kind of foxes there?

A. No.

Q. And he said the Provincial Fox Company handled blue foxes—what did he say about the Fundy Fox Company?

A. He didn't explain it to me exactly, but he says they had the silver grey.

Q. And there was no silver grey foxes on this island? A. No.

Q. I gathered from what you stated that they did not trap steadily during the month of August, 1914?

A. No.

Q. How long did they trap,—up to what time?

A. Until the 11th, I think between the tenth and twelfth anyhow, I can say.

Q. Why did they stop then?

(Testimony of Otto Hilstrom.)

A. Mr. Grosvold notified us to stop, about the 11th Mr. Grosvold came down there with his launch and said, I have a lease on this island and I see you have too many foxes trapped already, you should have only thirty pair.

(By the COURT.)

Q. What date was that?

A. The 10th or 11th of August—the first of August we started [46] to trap, or the second, 1914.

Q. Give me the date again that Grosvold came there? A. The tenth of August.

The COURT.—Go ahead.

A. And we had 34 pair at that time, as far as I can remember—that is close—and we stopped until the 23d.

Q. What did Grosvold say to you or to the men there?

A. He just said he had an agreement that he couldn't take more than thirty pair off the island.

Q. And he told them all to stop trapping?

A. Yes, sir, he told them all to stop trapping.

Q. And they did stop until the 23d of August?

A. Yes, sir.

Q. Was Mr. Colwell present at this time?

Q. No.

Q. When did he return to the island?

A. The 23d, something like that—23d or 22nd.

Q. And then they started trapping immediately upon his return? A. Yes, sir.

Q. How many did they get after that?

A. I think it was six or eight, I don't remember,

(Testimony of Otto Hilstrom.)

something like that—it was only a few.

The COURT.—You say you stopped from the tenth to the 23d?

A. Yes, sir, from the tenth to the 23d.

Q. Do you know whether the men on the island made any *bona fide* attempt to trap after the 23d of August?

A. No, they were out trapping, that is all I know.

Q. You don't know whether or not they really intended to trap, or just opened the traps and let the foxes out—you don't know anything about that?

A. No. [47]

Q. Did you go around to the several traps at any time?

A. No—there was times I had been out but not that particular time because I was busy with the launch then, when he came back.

Q. Who was in charge of the trapping at this time? A. William Gardner.

Q. Did Mr. Grosvold have any private talk with him when he came on the island about the tenth of August?

A. Yes, he did. There were four of us there outside of the warehouse and he said to Billy Gardner, I want to see you out on the launch and he went out on the launch.

Q. And Gardner is the man who gave the orders to the rest of the men to stop trapping at that time? A. Yes, sir.

(By Mr. JAMES.)

Q. Who told you that Grosvold had stopped you from trapping?

(Testimony of Otto Hilstrom.)

A. Grosvold was down there himself,—he told us.

Q. Did Grosvold tell you that personally?

A. No, we were all four of us there in a bunch, the men.

Q. Did you hear him say that?

A. Yes, I heard him say that.

Q. You heard Grosvold say to stop trapping?

A. Yes, sir.

Q. Did Billy Gardner tell you that Grosvold said it or did you hear him say it?

A. I heard him say it—he said, you have too many foxes now already, you are supposed to take only thirty pair off the island.

Q. Did he tell you personally to stop trapping or is that all he said—or did he say anything more than you had too many foxes? [48]

A. That is what he said, yes.

Q. He didn't say anything more than that?

A. No.

Mr. JAMES.—We move that the rest of this evidence given under cross-examination to be stricken out as hearsay. We mean particularly the statement he made that Grosvold said they should stop trapping foxes; he has testified that Grosvold made the abstract statement that he had too many foxes and he didn't say anything more than that—he didn't tell them they must stop trapping foxes, therefore we submit that portion of the witness's testimony should be stricken.

The COURT.—I understood the witness to say he did tell them to stop.

(Testimony of Otto Hilstrom.)

The WITNESS.—He said, You have got too many already, don't catch any more.

Motion to strike denied; Plaintiff allowed an exception.

Q. Was Mr. Grosvold alone?

A. No—he was alone when he came up to the house, to the warehouse, but he had a man with him when he landed on the beach.

Q. Who was he? A. I forget his name.

Mr. DIMOND.—That is all.

(Questions by the COURT.)

Q. What are you doing now?

A. I am working at Patterson's blacksmith shop.

Q. Did you ever work for Grosvold? A. No.

Q. Have you any interest in this matter, in these foxes over here? A. No, sir, I have not. [49]

Q. Have you talked with Grosvold about the case here the last few days?

A. No, nothing about the case.

Q. Have you talked to Mr. Whelpley about it?

A. No.

Q. You have no feeling against either party in the case? A. No.

Q. You have not had any difference or falling out with either one?

A. No, not that would affect the case.

Q. Have you at all?

A. He kinder abused me, Mr. Grosvold, a little down there—not that I cared about it.

Q. Did you have any words with him?

A. When we got back home he said he never said

(Testimony of Otto Hilstrom.)

it and I said, you did and he said, you are lying, or something like that.

Q. You say he told you in the presence of William Gardner—

A. Nikit Gardner, William Gardner and Mike.

Q. Told you all to stop trapping, not to trap any more foxes. A. You have got too many now.

Q. And when was it Colwell returned,—about the 23d of that month? A. Yes, sir.

Witness excused.[50]

**Testimony of Andrew Grosvold, in His Own Behalf
(Recalled).**

A N D R E W G R O S V O L D, recalled by Mr. JAMES.

Q. During the time that Mr. Colwell was in possession and trapping foxes on Little Koniuji Island, during the month of August, did you visit the island?

A. Yes, I visited the island.

Q. Who did you see while on the island, on that particular visit? A. I saw Billy Gardner.

Q. Did you see Mr. Hilstrom at that time?

A. I think I did.

Q. Did you at that time say that they could trap thirty pairs of blue foxes on Little Koniuji Island and no more? A. No.

Q. Did you stop them from trapping at that time?

A. No.

Q. How many foxes did they have trapped at that time?

A. Some told me they had 22 pair and some told

(Testimony of Andrew Grosvold.)

me thay had 25 pair.

Q. What conversation took place between Mr. Gardner, or the parties you were talking to, and yourself while there? First—who was in charge down there for Mr. Colwell?

A. Hilstrom and Billy Gardner.

Q. Where was Colwell at that time?

A. He took a trip down to Fairbanks.

Q. State what conversation, and with whom, outside of Billy Gardner, took place as to the foxes, at that particular time?

A. The reason I paid that visit down there—I want to explain—

Mr. DIMOND.—We object to that—let him tell what the conversations were.

Mr. JAMES.—I will withdraw the question.

Q. Why did you go down to the island?

Mr. DIMOND.—We object to that as incompetent, irrelevant and immaterial. [51]

Objection overruled; defendant allowed an exception.

A. On account of a lot of rumors.

Q. What were those rumors?

A. They were to the effect that several parties were to go on Little Koniuji Island to get foxes and plant them on neighboring islands.

Q. How many foxes, for instance?

A. Some were going to have two pairs, and some one pair, and so forth, and as Mr. Colwell was away and I didn't know how things were going on and probably they were doing something wrong against

(Testimony of Andrew Grosvold.)

Mr. Colwell or the Fundy Fox Company, I thought I would run down and see how things were going on.

Q. Did you go to see anybody and talk this thing over with him?

A. I went to Unga and talked to the Commissioner and he agreed with me that I should take somebody with me and go to the island and see what they were doing and I took George Myers and got him to stay on the island and keep an eye open and see what was going on, but not to interfere with any of their operations whatsoever, but stay on the island and keep track of what they were doing.

Q. Those were your instructions to him?

A. To George Myers, the man I put down there.

Q. Do you remember about what time that was?

A. That was about—between the tenth and fifteenth of August.

Q. What year? A. 1914.

Q. Now referring back to the original question—State what conversation you had and with whom you had it, on Little Koniuji Island, on this particular visit?

A. I met Billy Gardner, who I understood was in charge and after [52] we shook hands, I informed him that I came down there to see how things were going on and introduced George Myers to him, and I told him that I wanted to leave George Myers on the island here, just to see what was going on, but he is not to interfere with you people whatsoever and I instructed George Myers, in front of Billy Gardner, not to interfere with any of their operations, just to

(Testimony of Andrew Grosvold.)

keep tab on what they were doing; then returning to the secretary's office Billy Gardner he says, I don't care anything as long as I get my thirty pair of foxes—

Q. He said thirty pair?

A. Yes, sir; as long as I get my thirty pair of foxes, what you do or what happens. He said, I am hired to trap thirty pairs of foxes and that is all I care for, so I can get paid for my work; and I said, Is that all you are going to trap, and he said, That is all I am going to trap. How many have you now? and he said, We have about 25 pair of foxes; and I said, it won't take very long to get the other five pair. That is all the conversation I had with Billy. He was friendly. I went and talked with the boys, talked over what the Fundy Fox Company was doing, what became of Whelpley and Colwell, etc. If they construe that as my saying that I only allowed them to trap thirty pairs of foxes, they are mistaken.

Q. Do you remember whether or not Otto Hilstrom was on the island—do you remember talking with him at any time? A. Yes, sir, I talked to him.

Q. Did you tell him that you would only allow them to trap 30 pair?

A. I told nobody that—I had no reason to tell anybody that; I am positively sure I never told him that.

Q. Did you have any conversation with Mr. Colwell after that time? [53]

A. After that Mr. Colwell came to Sand Point and asked if that was the fact, if I went to the island to

(Testimony of Andrew Grosvold.)

stop them from trapping and I denied it.

Q. When was that?

A. That was the following mail boat, about the 18th of August.

Q. Do you know whether they stopped trapping after you left, and up to and including the time Colwell came?

A. I don't know anything about that, but George Myers, the man that stayed on the island, reported to me they kept trapping right along.

Mr. DIMOND.—We object to that as hearsay.

The COURT.—Yes, that is not competent, what Myers told him.

Q. When Mr. Colwell came up to see you and you denied that you stopped them trapping, what did Mr. Colwell proceed to do at that time?

A. I don't know what he proceeded to do.

Q. Do you know whether or not he went back to the island and trapped again or not?

A. I don't know, but I heard he did.

Q. When you arrived back in Unga, or rather when it was reported to you, after Colwell mentioned that you had instructed them to stop catching any more foxes—did you meet any of the other boys that made any such statement or affidavit?

A. Yes, I went to Unga to see them.

Q. Who did you see there?

A. I saw this Otto Hilstrom.

Q. And what conversation occurred between you at that time, relate to the Court?

A. I faced him and called him a liar to his face,

(Testimony of Andrew Grosvold.)

if he ever made a statement that I had come down to stop them from trapping—I [54] don't think Otto will deny it.

Q. Did you meet any one else who made a subsequent affidavit?

A. This Nakita Polutoff, a native.

Mr. DIMOND.—We object to all this.

The COURT.—I don't think this is competent at this time.

Cross-examination by Mr. DIMOND.

Q. Do you deny that you told those men to stop trapping foxes on the island? A. I do.

Q. And you also deny that you stated to them that you had an agreement with Colwell that he was to take only thirty pair? A. I do.

Q. And you didn't state to them in words and substance, that they must stop because they had thirty pair and they were not allowed to take any more?

A. I do absolutely.

Q. Did you have a private conversation with Gardner at this time—did you call him down and talk to him in the cabin of the boat?

A. He came aboard my boat.

Q. All of them? A. Billy.

Q. Billy alone? A. Yes, sir.

Q. Did you give Billy any money or anything else to stop trapping on the island for Colwell?

A. I did not.

Witness excused.

Mr. JAMES.—We have here certified copies of papers, showing that [55] the Island of Little

(Testimony of Andrew Grosvold.)

Koniuji had been leased for the sum of \$100, per annum during the years of 1896, 1897, 1898, 1899 and 1900. We ask the Court to take judicial knowledge of the signatures of the officers and the seal of the department.

(These papers, being five certificates of the Department of Commerce, are admitted in evidence, without objection, marked Plaintiff's Exhibit "E"; copies are attached hereto and made a part hereof.)

(It is admitted that Mr. Grosvold, the plaintiff in this case, sent to the Department of Commerce, \$205, to cover the lease of Little Koniuji Island during the fiscal year 1916. It was sent by letter from Seward, Alaska, dated April 20, 1916.)

Mr. GREEN.—That is two payments in all?

Mr. WOOLLEY.—Just two payments.

Mr. GREEN.—That is for the years '14 and '15.

Mr. WOOLLEY.—1915 and 1916.

Mr. JAMES.—The first one was from 1914 to 1915 and this one is from 1915 to 1916.

Mr. GREEN.—The lease commences July 1, 1914—From July first it has not been paid yet?

Mr. JAMES.—No, the second payment was held back at that time due to the fact that there was some trouble with the consent of the department.

PLAINTIFF RESTS.

Mr. DIMOND.—At this time we wish to make a motion for a non-suit on the ground that the plaintiff has not made out a case sufficient to be submitted to the Court. We do not care to argue it. Motion denied; Defendant allowed an exception. [56]

DEFENSE.

Testimony of F. E. Whelpley, in His Own Behalf.

F. E. WHELPLEY, the defendant, called and sworn as a witness in his own behalf, testified as follows:

Direct Examination by Mr. DIMOND.

Q. State your name and residence.

A. F. E. Whelpley; Seward, Alaska.

Q. What is your business?

A. I have been interested in raising foxes for fourteen years.

Q. Are you familiar with fox farming, as it is called? A. I am.

Q. Have you ever been engaged in it personally, or through agents?

A. I have had a practical experience of ten years and a half.

Q. You have actually lived on the islands and helped raise the foxes?

A. Six and a half years actually living on the islands and four years and a half buying and selling and transportation of the animals.

Q. What is the Fundy Fox Company?

Mr. JAMES.—We object to that question as incompetent, irrelevant and immaterial.

Objection overruled—plaintiff allowed an exception.

A. When I left Saint Johns, New Brunswick, last November, the Fundy Fox Company was a limited partnership, composed of G. M. Barker and F. E.

(Testimony of F. E. Whelpley.)

Williams, doing business under the head of the Fundy Fox Company and buying and selling foxes, silver and black.

Q. Did they ever handle blue foxes?

A. No, sir.

The COURT.—Williams, Barker and yourself?

A. I withdrew from that company January 17, 1914.

Q. What was the business of the Fundy Fox Company while you were [57] a member of it?

A. The business of the Fundy Fox Company while I was a member of it was, the buying and selling of cross and black foxes.

Q. Was it engaged in the business of buying and selling silver grey foxes at that time?

A. I include silver grey when I say black.

Q. What was the Provincial Fox Company?

A. The Provincial Fox Company was begun for the purpose of handling, buying and selling and breeding, blue foxes.

Mr. JAMES.—We object to that question—there has been no foundation showing he was connected with the Provincial Fox Company.

Mr. DIMOND.—I will show that.

The COURT.—When was the Provincial Fox Company formed?

A. They were formed—I was west when that formation was made—I can only give you the approximate date—it was, *would* May, 1913,

Questions by the Court:

Q. Were you ever interested in that company?

(Testimony of F. E. Whelpley.)

A. I am a stockholder.

Q. When did you become a stockholder?

A. Immediately at the formation.

Q. In what proportion of the stock?

A. I have got one-fifth—if you will allow me to recall that: that formation may have been done in April—I was west when that was formed, it was either April or May, 1913.

(By Mr. DIMOND—Continued.)

Q. Now, in addition to being a stockholder of the Provincial Fox Company, did you hold any other relation toward it?

A. I was employed by them at the formation of the company, evidently April, 1914, because that is when my wage account started—1913.

Q. What were you to do for the company under that employment?

A. I was to come into Alaska, buy foxes and buy islands, and [58] transport any animals to the east for sale.

Q. Was the Provincial Fox Company formed before or after the time you went into the possession of the Little Koniuji Island?

A. It was formed before.

Q. You say you were a partner of the Fundy Fox Company until you withdrew from it, on what date?

A. January 17, 1914.

Q. Up until that time you also represented the Fundy Fox Company in Alaska?

A. Up to that time, yes, sir.

Q. Have you ever done so since that date?

(Testimony of F. E. Whelpley.)

A. I have not.

Mr. JAMES.—You mean your letter was dated here or arrived there?

A. I withdrew from the company on a settlement with my partners, January 17th—I was in New Brunswick.

Q. When did you first go upon Little Koniuji Island?

A. My first visit to Koniuji was September of 1913.

Q. When did you go into possession of Koniuji?

A. I paid Reid May 13, 1913, the price and went into possession of the property.

(By the COURT.)

Q. When did you go into possession of this island, if you ever did go into possession?

A. I took my option and sent my man to look after the property in March, 1913.

Q. Who did you send? A. Johnny Morgan.
(By Mr. DIMOND.)

Q. If you ever went into possession of Little Koniuji Island, either for yourself or as agent for others, tell how you came to go into possession of the island, either by purchase [59] or otherwise?

A. I came out here in 1913 with the understanding that I was to buy blue foxes.

Q. Understanding with whom?

A. The Provincial Blue Fox Company or the Fundy Fox Company if they went into another company, or formed another company to handle it—I was to buy for them. March 13th I took an option

(Testimony of F. E. Whelpley.)

from Reid, Lawrence Reid; he was then the owner of Little Koniuji Island.

The COURT.—In March, 1913, you say he was the owner of Little Koniuji Island?

A. Yes, sir. I paid him \$600. I came to Seward and wrote the Provincial Blue Fox Company that Reid's island was a good buy.

Q. And did they instruct you to buy the island?

A. The money was sent to me in May.

Q. Who sent the money?

A. The Provincial Fox Company.

Q. Did you finally buy the island of Reid, in May?

A. I concluded the purchase May 8th.

Q. Did Mr. Reid at that time give you a bill of sale for the island? A. He did.

Q. For his right to the island? A. Yes, sir.

Q. Where is that original bill of sale?

A. That original bill of sale evidently has got lost, but I have a copy, certified to by Judge Driffield, from the record—I had it of record.

Q. Did you put the bill of sale of record as soon as you got it? A. I did. [60]

Q. And have you searched for the original bill of sale? A. I have.

Q. I herewith hand you a paper and ask you whether or not that is a copy of the bill of sale—May 8th, 1913? A. It is.

Mr. DIMOND.—I wish to introduce this in evidence.

Mr. JAMES.—We object to it as incompetent, irrelevant and immaterial.

(Testimony of F. E. Whelpley.)

The COURT.—Where is Reid now?

A. He is in Scotland—I have a letter—

The COURT.—Have you his deposition in this case?

Mr. DIMOND.—No, sir.

The COURT.—I don't know what weight this may have, if any; the objection will be overruled. Plaintiff allowed an exception.

(The certified copy of bill of sale is admitted in evidence, marked "Defendant's Exhibit #1—copy is attached hereto and made a part hereof.)

Q. How much did you pay Reid for this Island?

A. The total amount was \$4000.

Q. You gave him that in actual money?

A. Yes, sir; in United States gold coin.

Q. And before the 13th of May, 1913?

A. Yes, sir.

The COURT.—You paid the \$600, when, did you say?

A. In March, 1913. It was a sixty-day option; the conclusion was May 8th.

Q. When you had the bill of sale made out, it was made in your own name, was it not?

A. Yes, sir.

Q. In what relation at that time did you stand to the Provincial [61] Fox Company in regard to the title to this island and the animals on it?

A. I was their legal representative—the trustee for the property.

Q. Have you maintained that position at all times since? A. I have.

(Testimony of F. E. Whelpley.)

Q. And you are now trustee for the Provincial Fox Company? A. I am.

Q. Is there any money due to you from the Provincial Fox Company?

Mr. JAMES.—We object to that as incompetent, irrelevant and immaterial, and has nothing to do with the issue in this case.

Objection overruled; plaintiff allowed an exception.

A. There is.

Q. How much?

A. \$8,500, approximately. I have a statement—that is approximate.

Q. And you at this time are holding the title, such right as you have in the island, subject to their payment of that money to you? A. I am.

Q. How large is this island?

A. I would judge that island, the longest part, the longest way, is six miles.

Q. How wide is it?

A. At its widest, about three or two and a half.

Q. Is it oval in shape?

A. It is deeply indented with bays—it is difficult to give an approximation of the size of the island.

The COURT.—What is the highest point in the island, the altitude?

A. I should judge about three or four hundred feet.

Q. Is it timbered? [62] A. No, no timber.

Q. What improvements were upon the island when you got it?

(Testimony of F. E. Whelpley.)

Mr. JAMES.—We object to that for the same reason, not pertaining to the issues.

Objection overruled; plaintiff allowed an exception.

A. There was a dwelling-house; there was three warehouses or barabas; there was traps for foxes.

(Questions by the COURT.)

Q. What kind of a dwelling-house, frame?

A. A frame building, yes, sir.

Q. What were the dimensions, about?

A. Outside measurement about 24 by 12.

Q. Two story or one? A. One story.

Q. Did you add any improvements while you were in possession of the island—did you put up any more buildings or anything of that sort?

A. Not to my knowledge.

Q. You say there were traps on there?

A. Fox traps.

(By Mr. DIMOND—Continued.)

Q. What is the size of them?

A. Two by three.

Q. How many were there of those?

A. Reid had nine which he turned over to me.

Q. How many did you place in there?

A. We were working in March of this year about 27 traps.

Q. You put all those out?

A. The balance, yes, sir.

Q. What is the value of those traps—have they any particular [63] value, outside of the island?

A. The value of those would be about three or four dollars apiece.

(Testimony of F. E. Whelpley.)

Q. What would you say is the value of the buildings or improvements upon the island at this time—that is, the traps and houses, etc.?

Mr. JAMES.—We object to that as incompetent, irrelevant and immaterial.

Objection overruled—plaintiff excepts.

A. Approximately \$1,500.

The COURT.—Including everything in the way of improvements?

A. Yes, sir.

Q. You have stated there is no timber on the island—everything built there must have been built out of lumber brought from the outside?

A. Yes, it would have to be brought from the outside.

Q. How many foxes were on the island on July 1, 1914? A. Approximately one hundred pair.

(Questions by the COURT.)

Q. Was there anything besides blue foxes on there?

A. Blue foxes were the only animals there.

Q. There were no cross or black foxes?

A. There were no cross or black foxes to my knowledge.

Mr. DIMOND.—Did the Fundy Fox Company ever have anything to do with this island?

A. They never have.

(By the COURT.—Continued.)

Q. What are these blue foxes worth?

A. The value of those at the present date I put \$200 a pair on them.

(Testimony of F. E. Whelpley.)

Q. Have they ranged about that during the last two years? A. During this time, yes sir. [64]

Q. About \$200 a pair? A. Yes, sir.

(By Mr. DIMOND.)

Q. Is that an estimate on live animals?

A. That is an estimate on live stock, yes, sir.

Q. What is their pelts worth after they are killed?

A. At the present market rating they would average about \$60.

Q. That is a skin, not a pair?

A. A skin, yes, sir.

Q. Now you state that the Fundy Fox Company never had anything whatsoever to do with this island? A. None whatsoever.

Q. What was the relation of Mr. Chesley D. Colwell to the Fundy Fox Company and to the Provincial Fox Company?

A. Chesley D. Colwell was sent in here by the Fundy Fox Company to buy silver, black and grey foxes.

Q. Was he ever an agent of the Provincial Fox Company? A. He was not.

Q. Was he ever in any manner employed by the Provincial Fox Co? A. He was not.

Q. What was he doing on the island in 1914?

A. He was there under my sanction to get live-stock off the island.

The COURT.—What date was that?

A. July 1914 or August, 1914.

The COURT.—Mr. Colwell was there by your permission, you say? A. Yes, sir.

(Testimony of F. E. Whelpley.)

Q. He was getting the stock off for whom?

A. For the Provincial Fox Company.

Q. Then he was employed, he was in the employ of the Provincial Fox Company? [65]

A. Yes, under me.

Q. How long did you remain in possession of this island after your purchase from Reid on May 8, 1913?

A. I am in possession yet.

Q. You claim to have been in possession all the time since then?

A. That is my claim.

Q. Have you ever conveyed the legal title to whatever rights you obtained in this island to anybody?

A. I have not.

Q. Did you ever make a bid to any department of the government for the right to lease this island?

A. Mr. Williams did, my partner.

Q. When was this?

A. That would be in the fall of 1913.

Q. How much did you bid?

A. He told me he bid \$200, the minimum bid.

Mr. DIMOND.—And Mr. Grosvold bid \$205—you admit that?

Mr. JAMES.—Yes, sir.

Q. How soon did you learn that the department of commerce had decided to give the island to Grosvold—when did you learn it, if you recollect?

A. I learned that they had accepted his deposit and bid in January, 1914.

Q. Where were you at that time?

A. I was in St. John, New Brunswick.

Q. Did you come to Alaska soon after that?

(Testimony of F. E. Whelpley.)

A. I did.

Q. Did you see Mr. Grosvold soon after you came to Alaska? A. Yes, sir.

Q. When did you see him and where?

A. Sand Point—about March 22, or something like that. [66]

Q. What year was this? A. 1914.

Q. Did you have a conversation with Mr. Grosvold at that time? A. I did.

Q. State what it was—state the substance of it?

A. I told Mr. Grosvold I had been to Washington and talked to Mr. E. F. Sweet and Mr. Sweet had sent me to him, with a view to getting time to remove my stock. We talked along and Mr. Grosvold says, "Whelpley, I don't see how the government can give me a clear lease without first getting clear of you." I says, "Grosvold, how long will you give me to get my stock off?" No answer. I says, "I ought to have two years or two trapping seasons." The answer he made me was, "Whelpley, you could get them off in one year," and I said, "You know I can't if I took five years."

Q. Did you have any further conversation?

A. I told him I was in possession and intended to remain there.

Q. You say you have had considerable experience with foxes? A. I have.

Q. What percentage of the foxes upon this island or that were upon this island at that time would it have been possible, or was it possible, to get off within one year?

(Testimony of F. E. Whelpley.)

A. You are speaking of March, 1914?

Q. Yes.

A. We would have a breeding season in June which would be an increase of 100%, so in answering that question I have got to answer it including the increase—that would be 200 pairs in the fall of 1914.

The COURT.—How do you mean, an increase of 100%? A. They would breed in May and June.

[67]

Q. Suppose there wasn't a hundred foxes there, 50 pairs or 100 pairs—would there be 200 pairs immediately after that?

A. Yes, sir, I have seen litters of eleven.

The COURT.—What is the average litter?

A. I would say an average litter would be about four. There is a great mortality and death rate; I couldn't get half of them in one year.

Q. You cannot get half of the foxes off the island in any one year? A. No, sir.

Q. So that even if you and Grosvold had come to some understanding that you were to have a year, you couldn't have gotten off half of your foxes within that year? A. I could not.

Q. How many foxes did you state were on the island at that time?

A. At the time the lease was executed?

Q. In March, 1914?

A. There was about 100 pair.

Q. When did Mr. Colwell go on the island?

A. I can't give you the date.

Q. About when? A. In July, 1914.

(Testimony of F. E. Whelpley.)

Q. How many foxes did he get while he was there, do you know?

A. He told me he got all told 37 pairs, 74 animals.

Q. When did he leave the island?

A. I can't say positively, but evidently he left before the "Dora" started for the east, on September first or second.

Q. He left there about September first or second?

A. Yes.

Q. When did you arrive there? [68]

A. I got into Koniuji September 25th.

Q. Of 1914? A. Of 1914.

Q. Did you go on the island immediately?

A. I landed on Koniuji September 25th.

Q. What was the extent of Mr. Colwell's authority under you in regard to Little Koniuji Island?

A. The extent of his authority was to get what livestock he could, until I came back to finish it.

Q. Did he have any authority to release whatever rights you or the Provincial Fox Company had on that island? A. He had none whatever.

Q. Did you put any men on the island in the fall of 1914? A. I did.

Q. Did you take them with you when you went out there in September? A. Yes, sir.

Q. How many men did you take with you?

A. Two men.

Q. Who were they?

A. Sandy McAdams and Konrad Syvertsen.

Q. How many foxes did these men get during the

(Testimony of F. E. Whelpley.)

winter of 1914 and 1915—from September, 1914—
and January, February and March, 1915?

A. 26.

Q. They got 26 all together?

A. Yes, sir.

Q. Were these live animals?

A. They were live animals, yes, sir.

Q. What is the trapping season, when can foxes
be taken?

A. They can be taken for their hides in December,
January and February. [69]

Q. Can they be trapped during August?

A. Yes, sir.

Q. And from that time during September, October
and November? A. Yes, sir.

Q. Can you trap live animals in winter too?

A. Yes, sir.

(By the COURT.)

Q. They can be trapped from August, all winter?

A. August, September, October and November—
they can be caught alive at any time of the year.

Q. Live animals can be trapped from August or
September—they can be trapped alive in any month
of the year, you say?

A. Except the breeding season.

Q. What is the breeding season?

A. The breeding season is May, June and July,—
you can catch them, but it interferes with your
breeding.

Q. And what is the season for fur?

(Testimony of F. E. Whelpley.)

A. December, January and February.

(By Mr. DIMOND.)

Q. Did you ever catch any live animals in March or April? A. I have.

Q. What is the best season of the year to catch live animals? A. In the fall.

Q. What months?

A. September, October and November.

The COURT.—Do you use different traps for catching them alive from what you do for fur?

A. Yes, sir.

Q. Why didn't your men catch more than 26 foxes that winter of 1915?

A. They were interfered with; Grosvold's men were there occupying [70] my houses which they wouldn't give up; and he had his family, his wife and two children there.

Q. Who was that?

A. Christensen, a partner of Grosvold.

The COURT.—What month was that?

A. That would be the fall of 1914. Let me see—in August, 1914, Mr. Colwell's men were there. No, this would be after Colwell left and I put my men there—September, October and November. You can't do any trapping with a woman and two children around and the disturbance that was created that fall around there, around that island, was detrimental to trapping. They got 26 animals that winter when they should have gotten at least sixty or seventy.

(Testimony of F. E. Whelpley.)

The COURT.—You got 26? A. Twenty-six.

Q. And I think you have stated in no event can you get more than 50% of the animals during any one year?

A. That would be a very large estimate.

Q. Usually you can't get that proportion?

A. You would have to have experts at the job to do that, especially on an island of the extent of Koniuji.

Q. Would it be easier to trap them on a smaller island? A. Yes, you have less territory to cover.

Q. Is Koniuji a very good island, or how is it in regard to fox farming?

A. It has been very successful for propagating foxes.

Q. How long did your men remain on this island, on Little Koniuji Island,—the men you put on there in the fall of 1914?

A. McAdams stopped for 33 days and Syvertsen stayed there continuously as far as I know until October 1st, 1915.

Q. How did he come to leave? [71]

A. He left to get provisions.

Q. When did they come back again, if they did come back? A. Syvertsen didn't return.

Q. Why not?

A. He went to Sand Point and got under the influence of liquor and couldn't get any grub,—no one would credit him.

Mr. JAMES.—We ask to strike that out.

(Testimony of F. E. Whelpley.)

The COURT.—Who is he?

A. He is a man I had on the island. He left to get grub and couldn't get it—his credit was gone, through several causes; one cause was—

Mr. DIMOND.—Never mind that.

The COURT.—The motion to strike will be overruled; plaintiff will be allowed an exception.

Q. When did you go upon the island again?

A. I went down there December 16th.

Q. Did you take men with you at that time?

A. I did.

Q. What year was that? A. 1915.

Q. How long did you remain there?

A. I remained there over night.

Q. How long did your men stay there?

A. They stayed there until they were arrested.

Q. When was that?

A. The night of the 20th or 21st of December.

Q. Then your men were there between the 16th and the 20th or 21st of December, 1915?

A. Yes, sir.

Q. At whose instance were they arrested?

A. On the complaint of Grosvold. [72]

Q. What happened then?

A. I was arrested on the 16th or the night of the 17th day of December myself, and they were arrested on the 21st and brought before the Court. I was brought before the Court the 23d and asked for a change of the place of trial and got it, and *it* was sent to Valdez for trial, and the men were held over, pending the decision of the Valdez court.

(Testimony of F. E. Whelpley.)

Q. What happened at Valdez? What became of the charge against you?

A. It was brought before the commission at Valdez and the case was dismissed.

Q. How many foxes did you or your men capture between the 16th and the 20th or 21st day of December, 1915? A. Fourteen skins.

The COURT.—During the year 1915 altogether, how many foxes did you trap on this island?

A. Fourteen skins.

Q. Let us get this clear— During the summer of 1914 you stated that Colwell got 74, to the best of your knowledge and information? A. Yes, sir.

Q. And during that fall you got 26?

A. My men got 26; yes, sir.

Q. In the fall of 1914? A. Yes, sir.

Q. And then in 1915, up to December 30th, you got 14—is that true? A. That is correct.

Q. When did you go back to this island from Valdez, after you had been arrested in the fall—when did you go back there again?

A. I arrived March 8th or 9th. I have a notebook. Am I permitted to look at notes? [73]

The COURT.—Yes, you may refresh your recollection by entries you made at the time, on the dates given.

Mr. JAMES.—Please state when you made those entries in that book.

A. I made the entries in this book the very day the thing happens.

(Testimony of F. E. Whelpley.)

Mr. JAMES.—What is the book?

A. It is a diary. On March 9th I left for Koniuji, 12 o'clock noon, and got there March 10th.

Q. What year was this? A. This year.

Q. 1916? A. Yes, sir.

Mr. JAMES.—There is no entry of any year in this book—

The WITNESS.—That is a diary of this year.

Q. How many foxes, if any, did you get after returning there on March 10th?

A. I took twelve more skins.

Q. Why didn't you take more?

A. The season was too late for the destruction of fur.

Q. What became of your men after they were arrested?

A. I asked the Judge at Unga to send a couple of men to represent me at Koniuji. He refused. He consented to have Grosvold's men, though, on the island, but refused me—my men had to stay away.

Mr. JAMES.—We move to strike that out.

The COURT.—Yes—just answer the questions.

Q. How long were your men in the custody of the officers of the law after they were arrested?

A. They were in the custody of the law until they got word that the case was dismissed here; they were still in custody pending the outcome of my suit—they were parties to the trespass, if trespass were proven.
[74]

Q. Did they go back to the island, any of them, be-

(Testimony of F. E. Whelpley.)

fore March 10th? A. They did not.

Q. Did you take some of them with you when you returned on March 10th, 1916?

A. I took Mr. John Gardner and Syvertsen.

Q. Have any of your men remained on the island since that time? A. They have.

Q. How many of them are there now—state their names?

A. There is a man there now by the name of Kleet, who has been there since April 1st, this year.

Q. Does he represent you? A. He does.

Q. Is there any other man on the island who represents you? A. At the present time?

Q. Yes. A. Yes, Doctor Spier.

Q. When did you cease taking foxes in this present year, about what time?

A. I killed the last one March 12th.

Q. Have you taken any since, either alive or dead?

A. I have taken none.

Q. What was the method of leasing adopted by the Treasury Department during the time you were out there on those islands?

Mr. WOOLLEY.—We object as not the best evidence.

The COURT.—The objection will be sustained to the question in that form. The view I take of the matter and the ruling I make is, not that he would be permitted to testify to what the department has ruled or has done, because such proof could be given by documentary evidence of the department itself, but

(Testimony of F. E. Whelpley.)

what has been done, actually been done, out there with this island in the matter of its use, occupation or anything else, [75] this witness may testify to as far as he knows.

Mr. DIMOND.—I will reframe the question. State if you know what was done, or in what manner this particular island was leased, during all of the time that you were familiar with it, or acquainted with it, between the years 1900 and 1914?

Mr. WOOLLEY.—We make the same objection.
Objection overruled. Plaintiff excepts.

A. Lawrence Reid told me he had not paid any money on any lease—

Mr. JAMES.—We move to strike that as not responsive to the question.

(Answer stricken.)

Q. Do you know outside of what you were told?

A. Do you mean in connection with Little Koniuji?

Q. Yes. A. I do not.

Mr. DIMOND.—Q. In order to save the record I wish to ask the witness certain other questions. Our object in this is to show that never before 1913 or before the passage of the Act of '98 were competitive bids called for for any of these island, but they were always leased to persons in possession, for the flat rate of \$100 per year.

The COURT.—If he knows that he may answer.

Q. Do you know whether or not competitive bids were ever called for for leases for any of these islands prior to the year 1913? A. They never were.

(Testimony of F. E. Whelpley.)

Mr. WOOLLEY.—We object to that as incompetent, irrelevant and immaterial.

The COURT.—It may be, but I want to know the situation and how the island was dealt with.

Objection overruled. Plaintiff excepts.

Mr. WOOLLEY.—We have the records to show how the island was leased in 1896, '97, '98, '99, and 1900. [76]

The WITNESS.—They never were to my knowledge advertised for competitive bids.

Q. How was it leased then, what was the system or method?

A. The revenue cutter called at the island and told us our lease was up and we paid them \$100 and got a permit to continue on that basis.

Q. Were these permits always given to the parties in possession?

A. They were either given to the parties in possession or delivered at the office of the company who controlled us.

Q. How many foxes are on this island now?

A. Approximately 130 pairs.

Q. How many were on there in March of this year?

A. Approximately, about 70 pairs.

Q. How long a time would it take you to get those foxes off, supposing you were permitted to retain possession of the island?

Mr. JAMES.—We object to that as immaterial.

Objection overruled. Plaintiffs excepts.

A. It would be impossible to get the 130 pair off—

(Testimony of F. E. Whelpley.)

Q. How long a time would it take you to get 130 foxes off? A. Two trapping seasons.

Q. You say there are 130 pairs on the island now—that includes the increase of the breeding season, this spring?

A. I mean to say at the present time there are 130 pairs of foxes, as far as I know.

Q. Did you ever make any agreement with Grosvold that you would relinquish the island to him or any of the foxes upon it? A. I did not.

Q. You heard Grosvold's testimony this morning as to a conversation [77] he had with you as to your taking options on other islands there for the Fundy Fox Company. Did you do that?

A. I did.

Q. What kind of foxes islands were these, blue or black? A. They were blue.

Q. How came you to take the options in the name of the Fundy Fox Company?

A. I have \$4,000, entrusted to me to pay for Koniuji, which I gave Lawrence Reid May 8th. I had no more money of the Provincial Fox Company. I thought they were good options and I took them and I paid the money of the Fundy Fox Co.

The COURT.—I thought you said you received this money from the Provincial Fox Company?

A. Four thousand dollars, yes, sir, and I paid it to Lawrence Reid.

The COURT.—You took the option in the name of the Fundy Fox Company? A. Yes, sir.

Q. You did this because you had no money of the

(Testimony of F. E. Whelpley.)

Provincial Fox Company in your possession?

A. Yes, sir—I had no more money of the Provincial Fox Co.

Q. Were these options ever taken up by you, afterwards, later? A. They were not.

Mr. DIMOND.—I think that is all.

Cross-examination by Mr. JAMES.

Q. You say you purchased the property from Reid on Koniuji Island for \$4,000, and that was the money of what company?

A. The Provincial Fox Company.

Q. And you took options on other islands at the same time? A. At the same time. [78]

Q. For what company?

A. For the Fundy Fox Company.

Q. How much money did you pay? A. \$1500.

Q. How many options did you take? A. Two.

Q. How much apiece?

A. One a thousand and one five hundred.

Q. Which one was the one for a thousand?

A. Chinaboro Island.

Q. Which was the one for \$500?

A. Bird Island.

Q. Where did you get the money from the Fundy Fox Company?

A. From St. Johns, New Brunswick.

Q. Who sent it to you?

A. The Fundy Fox Company.

Q. What officer?

A. What do you mean by that?

(Testimony of F. E. Whelpley.)

Q. What officer of the Fundy Fox Company?

A. The Fundy Fox Company was a limited partnership—I know no officers.

Q. Who were the partners?

A. Barker and Williams.

Q. When did that partnership start?

A. February, 1912.

Q. When did it finish, or is it still in existence?

A. I finished with the partnership January 17, 1914.

Q. Was the Fundy Fox Company ever incorporated? A. Never was.

Q. Never was? A. No. [79]

Q. Was Mr. Williams a member of that copartnership? A. He was.

Q. Did Mr. Williams send you that money?

A. He certainly did.

Q. And you were a member of that copartnership and an agent for them? A. I was.

Q. Did you use any of the Fundy Fox Company money to buy Reid out? A. Not a dollar.

Q. They had separate bank accounts?

A. I know nothing about their bank accounts in St. Johns.

Q. Did you have accounts for the Provincial Fox Company and the Fundy Fox Company?

A. I never carried a bank account.

Q. Just carried the cash? A. Yes, sir.

Q. All in one book, in one pocket-book?

A. Yes, sir.

Q. How much money did you handle for the Pro-

(Testimony of F. E. Whelpley.)

vincial Fox Company?

A. That is a difficult question to answer right now—in the vicinity of \$5,000.

Q. That includes the \$4,000, you paid—

A. That includes the \$4,000.

Q. To Reid? A. Yes, sir.

Q. How did the Fundy Fox Company or the Provincial Fox Company become indebted to you to the extent of \$8,500? A. Wage account.

Q. When did that wage account commence?

A. April 14, 1913. [80]

Q. Does it still go on?

A. It is still going on, yes.

Q. You are the regular agent for that company up there? A. I am.

Q. Is it a copartnership, the Provincial Fox Company? A. No, it is a limited stock company.

Q. Are you in constant communication with that company? A. I am.

Q. What is the condition of the Provincial Fox Company to day?

A. The condition of the Provincial Fox Company is, it is still in business.

Q. What is its financial condition at this time?

A. I don't know anything about its financial condition.

Q. When did you receive a letter from them last?

A. I haven't received a letter from the Provincial Fox Company for over a year and a half.

Q. And you are still their agent?

(Testimony of F. E. Whelpley.)

A. I am still the trustee of that property.

Mr. JAMES.—I move to strike that out as not responsive to the question.

The COURT.—Yes, it may be stricken.

Q. You have not heard from them since that time?

A. I was back there last November and knew all of their affairs up to November of last year.

Q. You say it is a limited copartnership?

A. I do not—a limited stock company.

Q. Is it incorporated?

A. It is incorporated under the laws of New Brunswick, Canada.

Q. And in Alaska you are the regularly constituted agent? A. Yes, sir, I am.

Q. Do you know the signature of Mr. Williams?
[81] A. I do.

Q. Is he interested in the Provincial Fox Company?

A. I don't know whether he is or not right now.

Q. Was he at one time, to your knowledge?

A. Yes, he was.

Q. I show you this signature and ask you if that is the signature of F. E. Williams?

A. Yes, that is the signature of F. E. Williams.

Q. I call your attention to this particular portion of the letter—"Might also say that the Provincial Fox Co. Ltd. has gone into liquidation." This is a letter dated February 16, 1916, addressed to Commissioner Driffeld?

A. I know nothing about liquidation.

(Testimony of F. E. Whelpley.) .

Q. And still you say you were in constant communication with that company as its agent?

A. I stated I hadn't received a letter from the Provincial Fox Company for a year and a half, but I was conversant with their affairs up to November of last year.

Q. Then you are not in constant communication with them, are you?

A. What do you call constant?

Q. Answer the question—you stated that you were in constant communication with them and subsequently you say you have not received a letter from them for a year and a half. Kindly explain your answer; we want you to be given every opportunity to explain your answer.

A. I gave you my answer when I told you that I hadn't received a letter from the Provincial Fox Company for a year and a half.

Mr. JAMES.—We offer this letter dated February 16, 1916, and signed F. E. Williams, addressed to F. C. Driffield, Commissioner.

Mr. DIMOND.—We object to it as incompetent, irrelevant and immaterial. [82]

Objection overruled; defendant allowed an exception.

The letter is admitted in evidence, marked Plaintiff's Exhibit "F"; copy is attached hereto and made a part hereof.

Q. How many foxes did you say were on Little Koniuji Island at this time?

(Testimony of F. E. Whelpley.)

A. One hundred and thirty pair.

Q. Two hundred and sixty foxes? A. Yes.

Q. And how many did you testify were on the island when you went on, in, I think you said, September, 1914? A. In September, 1914.

Q. How many were on that time?

A. Approximately seventy pairs.

Q. How long had it been since you were on the island up to the time you went on the island in September, 1914?

A. How long had it been? You mean intermittently?

Q. Yes, I mean when was your last visit previous to the time in September, 1914, that you again revisited the island and took foxes therefrom?

A. I was there in September of the year previous.

Q. When you went on the island in 1914, September, it had been just a year since you were down there? A. Exactly.

Q. How many foxes were on there when you arrived the year previous?

A. When I took the island over there was approximately 70 pairs of foxes.

Q. Then in one year they had not increased any?

A. They increased every year.

Q. But you have testified when you took over the island there were seventy pair and you testified to the fact that there [83] were seventy pair on there in the year following, 1914, September. They didn't increase any that year?

A. In 1914, September, I claim there was 70 pair

(Testimony of F. E. Whelpley.)

left after Colwell took his 37 pairs.

Q. His 37 pairs—they were Colwell's?

A. They were the Provincial Fox Company's.

Q. You say there are 130 now? A. I do.

Q. And how do you arrive at that conclusion?

A. Natural increase.

Q. What is your experience in the fox business? What do you know about it? How long have you been in it?

A. I have been in it altogether about fourteen years.

Q. Where?

A. On different islands in Alaska.

Q. Were you ever in Canada, in that business?

A. Never.

Q. Did you finance any business in Canada, with Canadian capital, up here? A. No.

Q. Where were you twelve years ago, what island?

A. Cape Elizabeth.

Q. Whom were you working for that year?

A. The Alaska Blue Fox Propagating Company.

Q. Have you been in Alaska continuously ever since then? A. No.

Q. When were you out?

A. For a couple of years.

Q. Were you in that Fox business at that time, too? A. Yes, interested in it. [84]

Q. What were your duties? I want to see how you qualify as an expert to tell how many foxes are on the island, an island three miles wide by seven miles long?

(Testimony of F. E. Whelpley.)

A. Taking care of foxes—looking after them.

Q. How long have you looked after foxes on Little Koniuji Island or have you ever looked after them?

A. I never looked after them.

Q. How do you know how many foxes are on that island?

A. I have ordinary brains and have been twelve years in the business.

Q. When did you take over the island first?

A. I took over the island May 8, 1913.

Q. And you say there were seventy pairs on there then, is that right?

A. There was more than seventy pairs there.

Q. You stated one time there was seventy and now you state more—how many pair were there?

A. I say approximately.

Q. Were there more or less, or what?

A. There were more.

Q. How many more?

A. I couldn't tell you.

Q. How did you arrive at the conclusion that there were seventy, or approximately seventy there?

A. By signs and by Lawrence Reid's statement.

Q. From Reid's statement you think you had seventy pairs there? A. Yes, sir.

Q. Were you ever over the island at the time you bought it? A. Yes, sir.

Q. And all around it? [85]

A. No, not all around it.

Q. You don't know how many foxes were there, outside of what Reid told you?

(Testimony of F. E. Whelpley.)

A. I know how many foxes were there, from my knowledge of the business, as an expert.

Q. You are an expert? A. Yes, sir.

Q. Then if you are an expert, tell us how you come to the conclusion that there were seventy pairs there?

A. By tracks, by signs, by what they are eating.

Q. What sort of signs? A. Foot marks.

Q. Tracks are foot marks, too?

A. And trails.

Q. How many live foxes did you see running wild there? Did you see any? A. Lots of them.

Q. At what time?

A. September, when I was down there in 1914.

Q. You say there were seventy pairs on there in September, 1914? A. Approximately.

Q. How many did you trap off at that time, you or your men? A. 26.

Q. 26 pairs? A. No, single.

Q. What did you do with them?

A. Transferred them to two adjacent islands.

Q. Which islands? A. Bendle and Spectacle.

Q. You figure that there were 140 there, when you took them off, [86] that is, seventy pairs, approximately? A. Exactly.

Q. How many have you taken off since that time?

A. Twenty-six skins.

Q. All at one time? A. No.

Q. When did you take them off?

A. Fourteen were taken off in December, 1915.

Q. And the next?

(Testimony of F. E. Whelpley.)

A. Twelve in March of this year.

Q. Now, I think you testified that the Fundy Fox Company was organized for the purpose of acquiring mixed and black foxes and the Provincial Fox Company blue foxes? A. That is right.

Q. Have you ever seen the articles of incorporation of the Fundy Fox Company? A. Never.

Mr. JAMES.—We want to offer in evidence the articles of incorporation of the Fundy Fox Company to show that the witness is wrong.

The WITNESS.—I don't know anything about the Fundy Fox Company, whether they are incorporated or not; they were not when I left them, when I left them as a partner.

Q. When was that?

A. The 17th day of January, 1914.

Mr. JAMES.—We offer these articles of incorporation of the Fundy Fox Company, and we offer this statement with the articles.

Mr. DIMOND.—We object to this. This is an incorporation organized under the laws of the State of Maine and there is nothing to show any connection between this incorporation and [87] the limited copartnership to which the witness has testified.

The WITNESS.—I have my release from Mr. Williams and Mr. Barker and the Fundy Fox Company partnership.

The COURT.—Do you know anything about this corporation?

A. No, sir.

The COURT.—Did you ever hear of it before?

(Testimony of F. E. Whelpley.)

A. No, sir.

Mr. JAMES.—Do you know Mr. Williams?

A. I do.

Q. Weren't you interested with him in the Fundy Fox Company?

A. Not in no Fundy Fox Company incorporated, no, sir.

The COURT.—They will be admitted for what they are worth. Geo. W. Barker, was he your partner in the Fundy Fox Company?

A. Yes, sir.

Mr. JAMES.—The purpose of presenting these articles at this time and the certified copy of that statement was because the witness on direct examination testified distinctly that the Provincial Fox Company dealt in blue foxes exclusively, whereas the Fundy Fox Company dealt in the black and cross foxes, in other words, limiting the Fundy Fox Company to other than blue foxes.

The COURT.—This will be admitted as a matter going to the credibility of the witness.

Defendant allowed an exception to the ruling.

The articles of incorporation, with the statement referred to attached, are admitted in evidence, marked Plaintiff's Exhibit G; copy is attached hereto and made a part hereof.

Q. When did you use the Fundy Fox Company money for these options?

A. May 7th or 8th, 1913.

Mr. JAMES.—That's all. [88]

Question by the COURT.—

(Testimony of F. E. Whelpley.)

Q. Whom was the money for these options paid to, or did you get the options from?

A. Mr. Grosvold.

Q. And did you forfeit the payment?

A. Yes, sir.

Q. Never carried—

A. Never carried the deal through.

Q. What was the purchase price for the one for which you paid a thousand dollars? A. \$12,000.

Q. That was for the Fundy Fox Company?

A. The options were taken for the Fundy Fox Company.

Q. And forfeited? A. Yes, sir.

Q. Did you ever get anything for the money, for the company? A. No.

Q. What was the purchase price for the one on which you paid \$500 down? A. \$6,000.

Q. And that was forfeited, also? A. Yes, sir.

Q. Nothing was ever obtained for either one?

A. No, sir.

(By Mr. JAMES.)

Q. That was the Fundy Fox Company, you say?

A. Yes, sir.

Q. The Fundy Fox Company as a copartnership or that Fundy Fox Company, corporation?

A. I know nothing about that Fundy Fox Company, corporation—as a [89] copartnership.

Q. Who were the members of that copartnership?

A. Williams and Barker.

Q. Williams, Barker and yourself?

A. Yes, sir.

(Testimony of F. E. Whelpley.)

Q. Just the three of you? A. Yes, sir.

Q. You each owned equally in it? A. We did.

Q. Now, in 1914, was there a suit against the Fundy Fox Company? A. Where?

Q. At Unga? A. I don't know of any.

Q. Was there ever a suit against the Fundy Fox Company at Unga?

A. According to their records there was.

Q. Were you served at all? A. I was not.

Q. Who was served as the agent?

A. Mr. Colwell.

Q. Mr. Colwell was served as the agent of the Fundy Fox Company? A. Yes, sir.

Q. He was the agent, was he, of the Fundy Fox Company? A. He was.

Q. From what time?

A. From about the 20th day of January of that year.

Q. What was that suit for?

A. I don't know anything about the suit.

Q. It was for wages, was it not, for men that had worked for you on Koniuji Island?

A. Yes, I believe it was; I seen the statement of it.

[90]

Q. And the Fundy Fox Company was sued?

A. Yes, sir.

Q. And paid the judgment? A. Yes, sir.

Q. Paid the wages?

A. Yes, sir—and that was charged up to the Provincial Fox Company, too, the whole amount.

Q. How do you know?

(Testimony of F. E. Whelpley.)

A. I know it because I went over the records last year in St. Johns, New Brunswick.

Q. Were there any foxes attached at that time?

A. I understood there was.

Q. Whose custody were the foxes in?

A. They were in the custody of Colwell.

Q. Were you there? A. I was not.

Q. And they were for debts, contracted previous, by yourself, wages? A. They were not.

Q. You say they were or were not?

A. They were debts contracted by Colwell.

Q. Where did the foxes come from that were attached? A. Koniuji.

Q. Just a few moments ago you testified they were for debts contracted by yourself before Colwell came and now you testify they were for debts contracted by Colwell—which was it?

A. They were for debts contracted by Colwell.

Q. Were they not for wages contracted by yourself on Little Koniuji Island before Colwell ever appeared there?

A. Part of them might have been; yes.

Q. Wasn't it? Isn't it a fact? [91]

A. My answer is that part of it was.

Q. Was all of it? A. No.

Q. You are sure of that?

A. Some of that, all of Billy Gardner's wage, was contracted by Colwell.

Q. How much did Billy Gardner get, all told, from the judgment—how many months wages?

A. The whole thing amounted to about \$500—I

(Testimony of F. E. Whelpley.)

don't know how much.

Q. And that was all contracted by you previously?

A. It was not,—I said part of it.

Q. All but three months of it?

(No answer.)

Q. You referred to the Provincial Blue Fox Company—who is the Provincial Blue Fox Company?

A. Well, I might have referred to the Provincial Blue Fox Company but the official name of it was the Provincial Fox Company.

Q. There was no other separate company?

A. No, that was to designate the blue end of it.

Q. You don't know whether that company is in liquidation at the present time or not?

A. I do not. I know in the lower courts of Prince Edwards there were options on Prince Edwards Island pertaining to it.

Q. Nothing pertaining to Alaska at all?

A. Nothing at all.

Q. Did you ever have any communication from Mr. Williams while you were connected with the Fundy Fox Company to the effect that Mr. Colwell was coming up to this place, yourself, as the agent for the Fundy Fox Company? Did Mr. Williams ever notify you that you were discharged from the Fundy Fox Company? [92]

A. Why, I withdrew from the Fundy Fox Company as a partner. They couldn't discharge me until we had a settlement, which settlement I have a copy of.

Q. Did you ever receive such a letter?

(Testimony of F. E. Whelpley.)

A. I never received such a letter.

Q. Did Colwell deliver a letter to you stating he was to succeed you as the agent of the Fundy Fox Company in Alaska? A. No such letter.

Q. You testified that you were arrested at Unga, the complaining witness being Mr. Grosvold, the plaintiff in this case, and you requested a change of venue to Valdez and it was granted? A. Yes.

Q. And on what grounds was it granted?

A. I refused to give evidence before the court at Unga.

Q. Why?

A. I couldn't get justice at Unga with a jury that Grosvold could control—that was my objection.

Mr. JAMES.—We move to strike that out.

The COURT.—No, that is an answer to your question.

Q. Had you demanded a jury? A. No, sir.

Q. It was tried in Valdez? A. It was.

Q. Before whom? A. Mr. Dimond.

Q. Mr. Dimond, your attorney here?

A. Mr. Dimond was acting as United States Commissioner.

Q. The same gentleman sitting here?

A. Yes, sir.

Q. And you were acquitted for that criminal trespass? [93]

A. I was acquitted for that criminal trespass. I am not up in legal parlance. I was acquitted, as I understand it, on the grounds that the complaint was not strong enough to make a crime.

(Testimony of F. E. Whelpley.)

Mr. GREEN.—The records are the best evidence.

The COURT.—Yes, I think we will let the records determine that.

Q. That cause was disposed of on demurrer—there was no trial?

Mr. JAMES.—I should like to have that record here.

The WITNESS.—The case was disposed of on the demurrer.

Mr. DIMOND.—We will admit that.

Q. You testified, did you not, that the Provincial Fox Company were operating in Alaska, and had a license to operate in Alaska and you were acting as their agent here?

A. The Provincial Fox Company was never licensed to my knowledge in the Territory of Alaska, to do business.

Q. It was never licensed to do business?

A. No.

Q. Still, you transacted business for them—you purchased Little Koniuji Island for them, did you not? A. Yes, sir.

Q. What is your title with the Provincial Fox Company? A. Now a stockholder.

Q. Have you any other title, as manager, president, vice-president or secretary?

A. I have no title, no, sir.

Q. Are you the manager of the company up here?

A. Up here, yes, sir.

Q. You are their trustee and agent?

A. I am their trustee and agent.

(Testimony of F. E. Whelpley.)

Q. And you have been doing business for them?
[94]

A. I have.

Q. The Little Koniuji Island transaction between Reif and yourself was as trustee for them,—is that correct? A. That is correct.

Q. Where did you get your authority to purchase for them?

A. I think I was vested with authority when they sent me the money and told me to go ahead and make the buy.

Q. Have you got any evidence, any letter, any authorization from them to act for them?

A. I have not. Mr. Dimond has letters in his possession which he can introduce to show you I was the trustee and agent and they held me accountable for that property.

Q. What was your salary with the Provincial Fox Company? A. \$150 a month.

Q. And expenses? A. And expenses.

Q. When did you go to work for them?

A. April 14, 1913.

Q. And when did you acquire the Little Koniuji Island? A. May 8, 1913.

Q. That was practically a month later?

A. Yes.

Q. Didn't you testify that the Provincial Fox Company owed you some \$8,000 at the time you took over the Little Koniuji Island for them?

A. I did not.

Q. Why did you take it over, then, for them, as

(Testimony of F. E. Whelpley.)

trustee for that company?

A. As a matter of convenience—I was here doing their business.

Q. I think, without having consulted the record, that you stated [95] the reason you took it over as trustee for the company, was that they owed you some money at that time?

A. When do you speak of—May 8, 1913?

Q. Yes.

A. No, nothing of the kind.

Q. You have no written authority at all from the Provincial Fox Company as to what you were to do for them?

A. None whatever.

Q. Or what your authority is?

A. None whatever.

Q. You didn't have the bill of sale made out to yourself as trustee for them—just had it made out to yourself personally?

A. Yes, sir.

Q. Now, then, regarding the traps—how many traps are there up there?

A. Now?

Q. Yes.

A. On March tenth and eleventh there was about 27 or 28, and also corrals on that island, built there by myself.

Q. Have you accounted to the Provincial Fox Company for all the foxes you have taken from that island?

A. I certainly have, up to this year.

Q. Why didn't you account this year?

A. I will account for that to them at St. Johns, New Brunswick, when they settle my account.

(Testimony of F. E. Whelpley.)

Q. You stated that Mr. Williams made a bid for Little Koniuji Island. Did you write to Mr. Williams and tell him to make that bid?

A. I certainly did. I told him it was open to lease and he had better get in and do something, which he did, to the best of my knowledge—he said he did.
[96]

The COURT.—When did you do that?

A. That would be the fall of 1913.

Q. About the same time that Mr. Grosvold bid, too?

A. Yes, when I arrived home in December I asked him what he had done on it and he said, I bid the minimum bid, when I said, you are beat.

The COURT.—Did you say the fall of 1913?

A. Yes, sir.

Q. Did Mr. Williams bid it personally or in the name of the Fundy Fox Company?

A. I couldn't say.

Q. You didn't find out when you were back there?

A. No, I couldn't say.

Q. That is the same Mr. Williams whose name I showed you, signed to a Fundy Fox Company letter-head?

A. I recognized the signature you showed me.

Q. That is the same Mr. Williams that you refer to as making a bid on Little Koniuji Island?

A. Yes, sir.

Q. And he was interested in the Provincial Fox Company? A. He was.

Q. And you don't know whether he made that bid

(Testimony of F. E. Whelpley.)

in the name of the Provincial Fox Company or the Fundy Fox Company or himself, personally?

A. I couldn't say. He said he had made the bid out—afterwards I verified at Washington that it was made.

Q. Did you ever know of any correspondence between Mr. Williams and the department of commerce pertaining to the releasing of Little Koniuji Island or rather getting personal property off?

A. I didn't know of any. [97]

Q. You testified, if I remember correctly, on direct examination, that Syvertsen went up to Sand point to get some food, grub, and that Grosvold wouldn't give him any grub, that his credit was no good, but that he got very drunk and came home without any grub—did you testify to that effect?

A. I did.

Q. As a matter of fact, didn't Konrad Syvertsen come home with \$60 worth of grub in his boat that Grosvold trusted him for and nobody else would have trusted him for?

A. And where did he go, back to Little Koniuji? He went to Bandle Island.

Q. When did you see him after he left Little Koniuji Island—when did he leave for this grub?

A. He left Koniuji October first.

Q. And when did you next see him?

A. December 16th.

Q. And did he tell you at that time that he didn't get any grub? How do you know that he didn't get

(Testimony of F. E. Whelpley.)

any grub at Grosvold's and how do you know he was drunk up there?

A. He said so himself and John Gardner said so. He told me himself.

Q. When did he tell you?

A. About the 16th or 18th day of December, when I was with him.

Q. That was two or three months afterwards?

A. Sure. Konrad Syvertsen wouldn't have got any grub from Grosvold to go back to Koniuji; he got grub and went to Bandle.

Q. How do you know he went to Bandle?

A. I know—I was there and seen him.

Q. When did he go to Bandle?

A. I can't tell you that.

Q. What month? [98] A. December.

Q. And where were you from October to December of that particular year?

A. I was on my way out from the east.

Q. Where were you on October first—you were on Little Koniuji Island when he went to get the food?

A. October first last year?

Q. No, October of the year that you testified Konrad Syvertsen in October went to Sand Point from Little Koniuji Island to get some grub?

A. What October are you talking about?

Q. I am asking you what October you mean?

A. I am talking about October, 1915—that is the October I am talking about.

Q. When were you on Little Koniuji Island this particular time?

(Testimony of F. E. Whelpley.)

A. I was not on Koniuji Island.

Q. Did Konrad Syvertsen ever go from Koniuji Island to Sand Point? A. He certainly did.

Q. When? A. October, 1915.

Q. Where were you then?

A. I was in St. Johns, New Brunswick.

Q. Then how do you know he went up there and got drunk at this particular time?

A. He told me so, Gardner told me so; he left Koniuji October 1st.

Q. How about getting these foxes off the island—you say it would take you two years to get a set of foxes off? A. Yes.

Q. Why?

A. Because there are a certain number you will never get off,—they [99] can't be trapped.

Q. Why?

A. Because they are getting too foxy to go into a trap.

Q. It depends on how many men you put on the island, doesn't it?

A. Yes, and the kind of men you put there, too.

Q. Are there many good fox men to the westward?

A. No, not many.

Q. Just a few of you, that are expert? A. Yes.

Q. How many?

A. That is quite a question, how many experts there are.

Q. Who is this man Kleet you mentioned?

A. He is a man that has been hired by my representative, Doctor Speer; I have never met him.

(Testimony of F. E. Whelpley.)

Q. A native? A. German descent, I believe.

Q. Didn't you say he represented you, Kleet represented you?

A. He represents my interest at Koniuji.

Q. He is on Koniuji now, Kleet? A. Yes, sir.

Q. And Speer, too? A. Yes, sir.

Q. You mentioned that Christiansen was on the island, on Little Koniuji Island—I don't know the exact time,—it was on your direct examination. Do you remember what Christiansen you referred to at that time?

A. You will have to tell me what time you are talking. Are you talking about September, 1913?

Q. No, September, 1914?

A. Charley Christiansen [100]

Q. Do you know anything about Colwell first coming from the outside? A. Into Alaska?

Q. Yes.

A. Yes, he came in working under me,—four years ago.

Q. And has he worked for you continuously ever since?

A. Colwell has not worked for me since I left the Fundy partnership.

Q. And what date did you say you left the Fundy Partnership? A. January 17, 1914.

Q. And on September 22d you say he was working for you on Koniuji Island?

A. He was working under me on Koniuji Island for the Provincial Fox Company.

Q. Didn't you testify that he was out of your em-

(Testimony of F. E. Whelpley.)

ploy from January 17, 1914?

A. I did. I take it back. He was under my employ as a special agent on Koniuji those two months, taking those animals off.

Q. For the Fundy Fox Company?

A. No, the Provincial Fox Company.

Q. Did he have any written authorization?

A. None whatever.

Mr. JAMES.—That is all. I want to put in evidence the certificate attached to the Articles of Incorporation (Exhibit “G”) and the statement attached thereto (Exhibit “H”).

Admitted without objection, marked Plaintiff’s Exhibit “I”; copy is attached hereto and made a part hereof.

(By Mr. DIMOND.)

Q. Will you state clearly just what the relations were between the Fundy Fox Company and the Provincial Fox Company, if any [101]

A. In February, 1912, F. E. Williams and G. M. Barker and myself formed a limited partnership, calling ourselves the Fundy Fox Company, to buy—the Fundy Fox Company of St. Johns, to buy, deal and trade in all kinds of foxes. They started me west, with money to invest. I came up primarily to buy blue foxes. Williams says, Get us forty pairs and we can form a blue fox company. I said, I can do that. I got them forty pair and they formed the Provincial Blue Fox Company. We, as a partnership, turned over our rights and privileges to deal in blue foxes and forty pairs of blue foxes to

(Testimony of F. E. Whelpley.)

the Provincial Fox Company for a consideration and the Provincial Fox Company came into being. We forfeited all rights to deal in blues to that company. 1913 came. The blue fox business was booming in the east. The Provincial Blue Fox Company told me to buy everything I could see, if there was any good piece to buy it. I went out and took an option in March for Lawrence Reid's island, agreeing to pay him in sixty days, paying him \$600, and I closed the option May 8th and paid him his balance, buying the property in my own name, recording it in my own name.

Q. After that date, did the Fundy Fox Company ever deal in blue foxes, in any manner, in Alaska?

A. They never did.

Q. Do you know anything about this corporation of the Fundy Fox Company, organized under the laws of Maine, the articles of incorporation of which were introduced here in evidence?

A. I know nothing about that corporation.

Q. If any of your former partners were engaged in that corporation you knew nothing about it then and know nothing about it now, except the information you have acquired from the exhibit introduced here in evidence? A. That is true. [102]

Q. Here is a paper dated the 16th day of January, 1914, and signed by yourself, Williams and Barker, in which you sell out your right, title and interest in the Fundy Fox Company, a limited partnership—(Handing to counsel)—

Mr. DIMOND.—We offer that in evidence. I

(Testimony of F. E. Whelpley.)

want to prove that the Fundy Fox Company, of which the witness has been testifying, was a limited copartnership and his partners acknowledge it there. I offer it to counteract whatever effect may be given to these other papers introduced, as affecting the credibility of the witness.

The bill of sale is admitted in evidence, without objection, marked "Defendant's Exhibit #2"; copy is attached hereto and made a part hereof.

Q. I will ask you to state if these are the signatures of yourself and your partners in the Fundy Fox Company?

A. These are the signatures of myself and two former partners.

Mr. JAMES.—What is the date of it?

A. The 16th day of January—I stated the 17th—1914.

(By the COURT.)

Q. You say that Colwell was never employed directly by the Provincial Company? A. Yes, sir.

Q. He was not?

A. Not directly, no, sir.

Q. What did he do with the 78 foxes, the foxes he got?

A. He transferred those to Cordova; they were afterwards taken to St. Johns.

Q. Whom did he send them to, did he turn them over to you?

A. He turned them over to the Provincial Fox Company in St. Johns, New Brunswick. [103]

Q. You say he was working for you, under your

(Testimony of F. E. Whelpley.)

direction? A. Yes, sir.

Q. And were you there when he got them?

A. I was not on the island when he got them.

Q. Were you east? A. I met him in Seward.

Q. Did he send the 74 foxes directly to this Provincial Fox Co.?

A. They went through in December of that year.

Q. Do you know whether they received them all?

A. Yes, sir, they received all that were living—half of them died.

Q. Did you ever get any acknowledgment from them of the receipt of these seventy-four, or those of them that were shipped by Colwell? A. No, sir.

Q. Who paid Colwell for this work?

A. I take it for granted that the Provincial Fox Company—I don't know, the Provincial Fox Co., I think.

Q. How much did you agree to pay him?

A. He was under agreement with the company and I didn't stipulate any agreement with him, in regard to looking after this stuff at Koniuji.

Q. He was employed by the Fundy Fox Co.?

A. Yes, sir.

Q. Wasn't he working for the Fundy Fox Company?

A. For both practically—I couldn't see to it, I had to come east and some one had to look after that stock.

Q. You say you were to get \$150 per month from the Provincial Fox Co. since April or May, 1913?

A. Yes, sir.

(Testimony of F. E. Whelpley.)

Q. Did they ever pay you anything at all?

A. No, sir, they disputed my claim. [104]

Q. You have handled all these foxes since then?

A. Yes, sir.

Q. Have you ever kept any of them to apply on your claim? A. No, sir.

Q. For the three years you have handled these foxes and sent them all to them, have you?

A. No, sir; I sent them to market and kept my bills of sale and returns of everything I have sold and have an accounting of everything.

Q. How is it they owe you \$8,000 now?

A. Wage account and expenses that I have been protecting their property and legal expenses.

Q. Do you give them credit for the foxes you have caught or sold? A. Yes, sir, that is credited.

Q. And they owe you \$8,000 in addition to that?

A. Yes, sir.

Q. You have had forty foxes—you had 26 pairs that were caught in 1914?

A. Twenty-six singles in 1914.

Q. They were alive, were they? That would be 13 pairs? A. Yes, sir.

Q. Did you sell those?

A. No, I transferred them to two islands adjacent to Koniuji.

Q. For whose benefit?

A. For my benefit, until they pay me my statement.

Q. Have you been running those islands since then? A. Yes, sir.

(Testimony of F. E. Whelpley.)

Q. For yourself? A. Yes, sir.

Q. And are still doing so? A. Yes, sir. [105]

Q. Have you any leases for those islands?

A. No, sir.

Q. The fourteen that you got this year, what did you do with those. Those were skins, were they?

A. Yes, sir. They are sold. I have got bills of sale which I can show you, returns.

Q. You didn't account to the company for those?

A. No, I have not yet.

Q. There was a suit at Seward a year or two ago by Gardner vs. The Provincial Fox Company?

A. The suit was brought against the Fundy Fox Co.

Q. How did the Provincial Fox Co. figure in that? Didn't you testify in that case that some company had assumed the wages for Gardner but Gardner never knew anything about it?

A. It was after he left there, yes, sir.

Q. He was back there with you in Nova Scotia?

A. Yes, sir.

Q. Who employed him there?

A. The Fundy Fox Company, partnership.

Q. And didn't you testify that the Fundy Fox Company sold all its foxes, all of its interest in these foxes and in its business out here, to the Provincial Fox Company?

A. To the blue interests, yes, sir, but we also had silver and black interests at Unga.

Q. You had other companies and islands?

A. No, we had other kinds of foxes there.

(Testimony of F. E. Whelpley.)

Q. Did Gardner ever get his money for that claim? A. Not to my knowledge.

Q. You are the one that hired him yourself?

A. Yes, sir.

Q. Did he ever make any demand upon you for this money? [106]

A. He never did. I might state in the final reckoning up of the Gardner account, he was over \$400, in our debt in place of the Fundy Fox Co. owing him.

Q. Are you a citizen of the United States?

A. I have taken my first papers out, two years ago, three years ago—May, 1913.

Q. How long had Mr. Reid been running this island, do you know? Do you know from whom he bought?

A. As I understand from Mr. Reid himself, he got the island from the Alaska Commercial Company for debt due him on account of wages.

Q. Do you know about what year?

A. 1902 he tells me

Q. How many foxes were there supposed to be when you bought this island for the Provincial Fox Co?

A. I would say approximately seventy pairs.

Q. Is that the number you agreed upon in this sale?

A. Yes, Lawrence Reid said there are seventy or more pair there and I would certainly believe there was.

Q. You say you paid the Cutter or some officer of the government \$100, a year—did you ever pay that yourself?

(Testimony of F. E. Whelpley.)

A. No, it was paid by the president of the Alaska Alaska Blue Fox Propagating Company.

Q. For whose benefit was it?

A. For the Fundy Fox Company—No, for this Alaska Blue Fox Propagating Company.

Q. Did the Fundy Fox Co., the Provincial Fox Co., or you ever pay any lease on this island, this Little Koniuji Island?

A. Not to my knowkledge.

Q. Do you know whether Mr. Reid did or not?

A. I couldn't say. [107]

(By Mr. JAMES.)

Q. You stated that the Fundy Fox Co., you did not know anything about it—as far as you knew it had no place in that business to the westward, is that correct? A. At what date?

A. At any time? That it was not a corporation?

A. I stated nothing of the kind.

Q. Is that your signature (showing witness paper)? A. Yes, sir.

Mr. JAMES.—I have here an office copy of a deposition, that has not been sworn to before any officer but signed by Mr. Whelpley. I would like to offer this particular portion of it in evidence. It is in the case of Gardner vs. The Fundy Fox Co., at Seward. It is certified to as being correct by Mr. Whelpley—he admits his signature here.

Mr. DIMOND.—Show it to the witness and ask him if he gave such testimony.

The COURT.—Do you offer it?

Mr. JAMES.—Yes, we offer it in evidence and I

(Testimony of F. E. Whelpley.)

want to read it into the record.

Mr. DIMOND.—We object to it unless the witness identifies it as testimony given by him.

Q. I show you this testimony and answer—Is that your testimony?

A. Yes,—I presume you want me to say that it was incorporated—Is that the idea?

Q. The question is, did you give that answer there?

A. Yes, if that is a court record; that is my signature.

Q. I didn't say it was a court record. You did give such testimony, did you? A. Yes, sir.

Mr. JAMES.—May I read it into the record?
[108]

The COURT.—Yes, sir. The objection will be overruled. Defendant allowed an exception to the ruling.

Defendant allowed an exception to the ruling.

Mr. JAMES. (Reading.)—In the Justice's Court for Kenai Precinct, Third Division Territory of Alaska, before M. J. Conroy, U. S. Commissioner and Ex-officio Justice of the Peace. John Gardner, Plaintiff versus Fundy Fox Company, Ltd., a Corporation, Defendant. Testimony of F. E. Whelpley, witness for plaintiff, taken May first, 1914, at 4 P. M. at Seward, Alaska.

Question. You say the first agreement was made in November, 1912.

Answer. Yes. It was a written agreement and terminated November 15th or 20th, 1913. The Fundy Fox Company was originally known as a part-

(Testimony of F. E. Whelpley.)

nership comprising G. M. Barker, F. E. Williams and myself. It is now incorporated and known as the Fundy Fox Company, Ltd., of Massachusetts. On December 15th 1913, at the time of the second agreement, I was a member of the partnership, but am not at present interested in the company.

Mr. JAMES.—That is all.

(By Mr. DIMOND.)

Q. How do you reconcile your statement previously made here that you knew nothing about any Fundy Fox Company, Corporation, when you have testified that you admit it is incorporated and known as the Fundy Fox Company, Ltd., of Massachusetts?

Mr. Williams wrote me that they were to get Massachusetts capital interested and to have it incorporated.

Q. When did he write and state this?

A. It was prior to that—I can't say the exact date. To the best of my knowledge that company was an incorporated company at the time I gave that evidence; afterwards proved it was not by my release which you have already got there before you. [109]

Q. When you gave that evidence you were acting on the strength of Williams' letter that they were going to incorporate?

A. Yes, sir, decidedly—I was at least eighteen days away from my partners and communications and the best of my knowledge I had to give that evidence.

(Mr. JAMES.)

Q. When were you away from your partners for eighteen days?

(Testimony of F. E. Whelpley.)

A. I can't get communication across the continent under eighteen days.

Q. What year was this that you refer to in your examination by Mr. Dimond—what year?

A. It was the year that that case was on?

Q. This is dated May 1, 1914 at Seward—you evidently knew it then, didn't you, two years ago last May? You evidently knew all about this at that time? A. That is my explanation of that.

(Mr. Dimond.)

Q. This deposition was given then after you had withdrawn from the partnership? A. Correct.

Q. And you were acting only upon reports that came to you? A. Yes, sir.

Mr. DIMOND.—There is a deposition on this incoming boat from Mr. Williams, who is the president of the Fundy Fox Co., and with the request that the case might be held open pending the receipt of that deposition, we will close.

Mr. JAMES.—No objection—we reserve the right to make objection to such parts as may be considered by us as objectionable.

The COURT.—Very well. [110]

Mr. DIMOND.—Before closing I want to recall Mr. Grosvold for a question.

(Mr. GROSVOLD, recalled by Mr. DIMOND.)

Q. Have you not received information from the department of commerce recently that they have abandoned their method of leasing this Little Koniuji Island and other fox islands by calling for bids and

(Testimony of F. E. Whelpley.)

they intend hereafter to lease the islands to the parties in possession?

Mr. JAMES.—We object to that as incompetent, irrelevant and immaterial.

Objection sustained; Defendant allowed an exception.

Witness excused.

Mr. DIMOND.—I also want to recall Mr. Whelpley.

(F. E. WHELPLEY, by Mr. DIMOND.)

Q. Did this suit of John Gardner against the Fundy Fox Company have anything to do with Little Koniuji Island or any services he rendered on that island,—the one tried in the Commissioner's court at Seward?

A. John Gardner was acting in a dual capacity out there in looking after Cold Harbor, Unalaska and Koniuji. And the suit did—

Q. Did affect Koniuji Island? A. Yes, sir.

Q. Some of it was for services rendered on Koniuji Island?

A. And some for services rendered at Cold Harbor—it was the property of the Fundy Fox Company.

Q. I understood you to say a short time ago, and the questioning afterwards showed, Gardner to be indebted to one of the companies. A. Yes, sir.

Q. How did he become indebted to any one of the companies in any [111] sum of money?

A. He got four hundred and some odd dollars, which he failed to give an accounting for.

(By Mr. JAMES.)

(Testimony of F. E. Whelpley.)

Q. Whom did he get it from?

A. The Fundy Fox Company.

Q. How do you know this, who told you he got \$400, and failed to account for it?

A. Williams and Barker.

Q. Did you see the account yourself—do you know it of your own knowledge, or just as hearsay from these people? A. Hearsay.

Mr. JAMES.—We ask that it be stricken out.

The COURT.—The fact in regard to this suit by Gardner for wages over at Seward was that he sued one of these companies and the testimony showed it was the other company that was liable—isn't that the fact?

A. As near as I can remember your conclusion was that, as I remember the case.

Q. In this case of Gardner vs. The Fundy Fox Co., wasn't the case dismissed as to the company and yourself made the defendant—Didn't you have to pay the claim of John Gardner for wages in this suit?

A. I paid no claim in any suit of John Gardner.

Witness excused. [112]

Testimony of T. P. Geraghty, for Plaintiff.

T. P. GERAGHTY, a witness and sworn in behalf of the plaintiff, testified as follows:

(By Mr. JAMES.)

Q. You are deputy in the Clerk's office?

A. Yes, sir.

Q. And as such you are familiar with the files of the foreign corporations? A. Yes, sir.

(Testimony of T. P. Geraghty.)

Q. Have you anything on file showing that the Provincial Fox Company has been licensed to do business in this territory?

A. That name is not on file in the Clerk's office.

Q. And the Fundy Fox Company?

A. That has been filed—August 17, 1914.

Q. You are the legal custodian of these records?

A. I am deputy in the office.

Witness excused.

Mr. Dimond reads the depositions of JOHN GARDNER, HARRY RICHARDS, GEORGE CUSHING. Copies are attached hereto and made a part hereof.

**Testimony of F. E. Whelpley, in His Own Behalf
(Recalled).**

Mr. DIMOND.—I want to recall Mr. Whelpley.

(F. E. WHELPLEY, by Mr. DIMOND.)

Q. What are your financial relations with Mr. Gardner at the present time—is he a debtor or creditor of yours?

A. Gardner is now in my debt about \$500.

Q. How much was his claim against the Fundy Fox Co., for which he sued, do you recollect?

A. About that amount, as far as my recollection serves me.

Q. So that even if you were responsible for that personally, he now has the sum he claimed thereunder? A. Yes, sir. [113]

(By the COURT.)

Q. When you were back there in Nova Scotia, you

(Testimony of F. E. Whelpley.)

hired Gardner and he came on ahead of you, back to Alaska? A. My partners hired Gardner.

Q. You knew of it— you were just as much liable as they were; you know he came up? A. Yes, sir.

Q. Now he came out here and he claimed to have worked two or three months before Colwell came out—wasn't that the fact? A. Yes, sir.

Q. Colwell then came out and took possession of all this property claiming under the Provincial Fox Company? A. No, the Fundy Fox Co.

Q. He came out, still claiming under the Fundy Fox Company?

A. Yes, sir—the Cold Harbor property.

Q. Which one of these companies was liable to this man, Gardner for his wages—Did Colwell come out here before you did, to Alaska?

A. We arrived about the same time.

Q. How was it then, if this man Gardner was employed by the Fundy Fox Co., and Colwell came out here representing that company and Gardner had been working for that company and he sued that company, that he was not entitled to recover in that case—there was something about the case I am not quite clear on?

A. On December 23d, Gardner and I were in St. Johns, New Brunswick and my partners, Williams and Barker, said, we had better hire Gardner for another year. I says, “Yes, draw up articles of agreement with him.” Williams says, “Never mind that, you have dealt with Gardner without articles of agreement, this can be run the same way.” I

(Testimony of F. E. Whelpley.)

said, "No, Williams, draw up articles of [114] agreement." There were no articles of agreement drawn up. We went away on a trip to New York and Gardner continued westward, to the westward. I went home. Disagreements came up between me and my partners and in the final settlement was the release which you see, which was introduced to-day, where I was released from all obligations and debts of the Fundy Partnership,—in my release January 16, 1913.

Q. How does that explain. I asked you how it happened if Gardner was employed by the Fundy Fox Co., and came out here to work for that company that he was not entitled to recover from them in that case? A. Yes, he certainly was.

Q. It is your idea that he was? A. Yes, sir.

Q. And you so testified at the trial, didn't you?

A. I couldn't say.

Q. You didn't say anything about any offset or his being overdrawn at that time—you testified his account was correct, didn't you?

A. As far as I knew at that date. Gardner now, in my private employ, is \$500, indebted to me.

Witness excused.

Testimony of L. V. Ray, for Plaintiff.

L. V. RAY called and sworn as a witness in behalf of the plaintiff testified as follows:

(By Mr. JAMES.)

Q. You are a practicing attorney in the City of Seward? A. Yes, sir.

(Testimony of L. V. Ray.)

Q. Are you familiar with the case of Gardner vs. Fundy Fox Co., that was tried before Judge Conroy, Commissioner? A. Yes, sir. [115]

The COURT.—It was appealed and tried before me after it was tried before Mr. Conroy.

Q. Relate the circumstances?

A. Judgment was rendered by the Commissioner in favor of Gardner. The defendant appealed and I think the next day after judgment was rendered by the commissioner, we tried the case before your Honor in the District Court. Your Honor found in favor of the appellant, the defendant, for the reason that there was nothing, in writing, showing that the corporation had assumed the debts of the partnership, due to Gardner. You also stated at that time that Gardner should look to Whelpley as one of the partners for his prey.

Q. What corporation do you refer to?

A. The corporation formed out of the partnership, as I now remember it—the names I have confused.

Q. That would be the Fundy Fox Co., corporation?

A. I couldn't say positively. I understand Whelpley had two partners. That partnership was afterwards incorporated into either the Fundy Fox Co., or the Provincial Fox Co., I don't remember which. They had headquarters at Prince Williams Arm, Nova Scotia also and offices in Boston.

Witness excused.

Testimony of J. L. Green, for Defendant.

J. L. GREEN, called and sworn as a witness in behalf of the Defendant.

(By Mr. DIMOND.)

Q. What is your name and occupation?

A. J. L. Green; I am an attorney.

Q. Did you ever hold any official position in this division?

A. Yes, I am assistant U. S. district attorney for four years, lacking one month. [116]

Q. While holding that office did you make any investigation as to the method adopted by the departments of the government with reference to fox islands in Alaska?

A. Yes, my attention was called to it by one of the agents of the N. A. C. Company. I didn't make the investigation as assistant district attorney, but my attention was called to it, and traveling on the Cutter on the westward trip I investigated to find out the method that was pursued and I found that the method of leasing the islands was, in collecting \$100. a year from the occupant, who claimed the foxes, who owned the foxes, each year, all the way up to 1900 but after 1900 they ceased to collect the tax. The reason why they ceased to collect the tax seemed to be that the attorneys of the N. C. Company in San Francisco questioned the right. Up to that time they had paid it right along but they had gotten the notion from the attorneys of the N. C. Company that there was no statutory authority for it and they couldn't be legally leased. They ceased it, but that was the method up

(Testimony of J. L. Green.)

to that time and I investigated to find out if that was the only method pursued. The Cutters would generally call. For instance, the islands that the N. C. Company had—they had their men at each one and it was leased to them and while the island was held in the name of this party, the N. C. Co. would pay for all these islands in the name of that party and charge it up to them. The other islands that none of the companies had anything to do with, the Cutter would call at the island, up to 1900 when they ceased to make the collection. Until this call for bids, on this occasion—but never before that, has there ever been a call for bids—it was simply a license to the party.

(By Mr. JAMES.)

Q. Who were you representing at that time?
[117]

A. I was representing any one—I was just making the investigation for my own information.

Q. Were you working as an attorney for the United States government?

A. I was attorney for the United States government, yes—in fact, I formed an opinion—I don't know that I ever wrote an opinion on the question until Mr. Whelpley called upon me for an opinion in regard to it, but those investigations were made really at the request of a gentleman who spoke to me about it at Kodiak.

Q. Were you ever there when the Cutter was paid the money?

A. No, they ceased to pay in 1900.

Q. When did you make this trip?

(Testimony of J. L. Green.)

A. I made three different trips. I made investigations and enquiry on every one of the trips to find out in regard to the matter. I did have a conversation with Mr. Cochran and Mr. Perry and got information from them.

Q. When did you make your first trip?

A. 1911, I think.

Witness excused.

TESTIMONY CLOSED.

I do hereby certify that I am the official court stenographer for the Third Judicial Division, Territory of Alaska; that as such I reported the proceedings had at the trial of the above entitled cause, to wit, Andrew Grosvold vs. F. E. Whelpley; that the above is a full, true and correct transcript of the evidence introduced at said trial.

Dated Valdez, Alaska, March 31, 1917.

I. HAMBURGER. [118-119]

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Stipulation Re Taking of Depositions of John
Gardner, et al.**

IT IS HEREBY AGREED AND STIPULATED,
by and between the respective parties hereto, that
the depositions of John Gardner, Conrad Syvertsen,

Harry Richards, and George Cushing, on behalf of the defendant, and of George Elmo, Sam Dupree, Charley Christiansen, Hja Lmar Christiansen, A. S. Catlin, and S. O. Casler, on behalf of the plaintiff, may be taken without any commission issuing for the same, and that said depositions shall be taken upon interrogatories and cross-interrogatories prepared and served by the opposite parties hereto; that the depositions of said parties shall be taken upon their oaths before F. C. Driffield, United States Commissioner, Unga Precinct, Third Division, Territory of Alaska; that the seal and signature of said United States Commissioner shall be absolute proof of the genuineness of the proceedings, and further proof of the signatures of the parties need not be made; that all legal objections to questions can be made at the trial, except that the question in "leading."

Dated at Seward, Alaska, this 21st day of April, 1916.

J. LINDLEY GREEN,
One of Attorneys for Defendant.
JAMES and WOOLLEY,
Attorneys for Plaintiff.

[Endorsed]: Depositions Published July 8th, 1916
and Filed May 15, 1916. Arthur Lang, Clerk, T. P.
Geraghty, Deputy. [120]

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Depositions Taken in Writing by U. S.
Commissioner, F. C. Driffield.**

BE IT REMEMBERED that pursuant to the stipulation hereunto annexed, and on the 29th day of of April 1916 and the 1st day of May 1916, in the Territory of Alaska, United States of America, before me, F. C. Driffield, a United States Commissioner in and for the Territory of Alaska, Third Division, Unga-Peninsula Precinct, and the Commissioner appointed by the annexed stipulation, personally appeared A. S. Catlin, Hjalmar Christensen, Charles Christiansen, and S. O. Casler, witnesses on behalf of the plaintiff, and John Gardner, Harry Richards, George Cushing, and Konrad Syvertsen, witnesses on behalf of the defendant, in the above-entitled cause now pending in the above-entitled Court, who being by me first duly sworn, were then and there examined and their depositions taken in writing in answer to the Interrogatories and Cross-Interrogatories annexed to the said stipulation and they testified as follows: [121]

*In the District Court of the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Plaintiff's Interrogatories Propounded
to A. S. Catlin.**

Interrogatory No. 1. What is your name, age, residence, and business?

A. My name is Albert S. Catlin. I am thirty-one years of age. I reside at Sand Point, Alaska. My business is that of a fisherman.

Interrogatory No. 2. Are you acquainted with plaintiff, Andrew Grosvold? A. Yes. I am.

Interrogatory No. 3. Were you ever in the employ of plaintiff, Andrew Grosvold?

A. Yes.

Interrogatory No. 4. If in answer to the last interrogatory you have said yes, state whether or not you were employed by him (Mr. Grosvold) or his agent during the months of January, February, and March, 1916, or any part thereof.

A. Yes, I was employed by Mr. Grosvold during the months stated.

Interrogatory No. 5. If in answer to the last interrogatory you have said you were so employed by plaintiff, Andrew Grosvold, state where you were employed?

A. I was working in Sand Point during the month of January and up to February 25th. On that date I left to work on Little Koniuji Island, arriving there on February 27th. I left Little Koniuji Island on March 11th, and have been in Sand Point since. [122]

Interrogatory No. 6. If in answer to the last interrogatory you have stated that you were employed on Little Koniuji Island, state what your duties were on said Island.

A. My duties consisted of feeding the foxes, and seeing that there were no trespassers on the Island, or any attempt to steal the foxes.

Interrogatory No. 7. Are you acquainted with defendant, F. E. Whelpley. A. Yes.

Interrogatory No. 8. Did you see defendant F. E. Whelpley on Little Koniuji Island during the time mentioned in Interrogatory four?

A. Yes, on the 11th of March.

Interrogatory No. 9. If in answer to the last interrogatory you state that you did, state whether or not you had a conversation with him at that time regarding who had the right to Little Koniuji Island?

A. Yes, I did.

Interrogatory No. 10. If in answer to the last interrogatory you have said that you did have such conversation, state the substance of the conversation?

A. Mr. Whelpley came to me, introduced himself, and stated that the case against him, in connection with the island, had been dismissed in his favor, and that Mr. Grosvold had nothing further to do with

the Island. He, Mr. Whelpley requested me to leave the island and stated that unless I did so I would be prosecuted for contempt of Court. I then went fishing for the Union Fish Co.

Interrogatory No. 11. When did the conversation mentioned in the last interrogatory take place?

A. On the 11th of March, 1916.

ALBERT S. CATLIN.

Subscribed and sworn to before me at Unga, Alaska, this 29th day of April, 1916.

[Seal]

F. C. DRIFFIELD,

United States Commissioner, Unga, Alaska.

[123]

*In the District Court for the Territory of Alaska.
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Plaintiff's Interrogatories Propounded
to Hjalmar Christiansen, by James & Woolley,
Attorneys for Plaintiff.**

Interrogatory No. 1. What is your name, age, residence, and business?

A. My name is Hjalmar Christiansen. I am thirty-one years of age. I reside in Sand Point, Alaska. My business is that of a fisherman.

Interrogatory No. 2. Are you acquainted with plaintiff, Andrew Grosvold?

A. Yes.

Interrogatory No. 3. If in answer to the last interrogatory you have stated that you are acquainted with plaintiff, Andrew Grosvold, state for how long a time you have known him?

A. I have known him for the past eight years.

Interrogatory No. 4. Were you employed by the plaintiff, Andrew Grosvold, during the year 1915, or any part thereof?

A. Yes.

Interrogatory No. 5. If in answer to the last interrogatory you have stated that you were employed by plaintiff, Andrew Grosvold during the year 1915, state the nature of the employment?

A. I was working on the Schooner "Lettie," rigging her up and painting her. I also worked as one of the crew of said Schooner when we made any trip with it.

Interrogatory No. 6. During the time mentioned in interrogatory four, did plaintiff, Andrew Grosvold employ you to plant foxes on Little Koniuji Island?

A. Yes. [124]

Interrogatory No. 7. If in answer to the last interrogatory you have answered, yes, state whether or not any one helped you in planting said foxes on Little Koniuji Island?

A. Yes. Sam Dupee, George Elmo, and a man named Hageman were there at the time and helped.

Interrogatory No. 8. Where did you get the foxes you planted on Little Koniuji Island?

A. From Chernoboura Island.

Interrogatory No. 9. When you planted the foxes on Little Koniuji Island, did plaintiff, Andrew Grosvold, have any one employed on said Island?

A. Yes.

Interrogatory No. 10. If in answer to the last interrogatory you have answered yes, state, if you know, the name or names of the persons so employed?

A. George Elmo, and a man named Pete, whose second name I forget.

Additional Interrogatories.

Interrogatory No. 11. State how many blue foxes you planted on Little Koniuji Island for plaintiff, and the time you so planted them?

A. We put (9) foxes on Little Koniuji about October 18th, 1915, and (7) foxes on same Island a few days later.

Interrogatory No. 12. State whether or not the foxes so planted by you on Little Koniuji Island were tame?

A. Yes, they were.

Interrogatory No. 13. If you answer "yes" to the above interrogatory, state how tame they were, that is to say, were they easily approached?

A. These foxes were caught around the house, and would allow one to approach within a few feet of them.

Interrogatory No. 14. Are you acquainted with defendant, F. E. Whelpley, John Gardner, Conrad Syvertsen, Gavin Steward, [125] and John Pulloff?

A. Yes.

Interrogatory No. 15. If you answer the last interrogatory in the affirmative, state whether or not any of the above named parties came upon Little Koniuji Island, and trapped and took therefrom any of the blue foxes planted thereon by yourself?

A. I do not know.

Interrogatory No. 16. If you have answered "yes" to the above interrogatory state how many of said foxes were so trapped?

HJALMAR CHRISTIANSEN.

Subscribed and sworn to before me at Unga, Alaska, this 29th day of April, 1916.

[Commissioner's Seal] F. C. DRIFFIELD,

United States Commissioner, Unga, Alaska.

[126]

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Plaintiff's Interrogatories Propounded
to Charley Christiansen, by James & Wooley,
Attorneys for Plaintiff.**

Interrogatory No. 1. What is your name, age, residence, and business.

A. My name is Charles Christiansen. My age is thirty years. I reside at Unga, Alaska. I am Clerk in Alaska Codfish Co's. store.

Interrogatory No. 2. Are you acquainted with plaintiff, Andrew Grosvold?

A. Yes.

Interrogatory No. 3. If in answer to the last interrogatory you have said you are, state how long you have been acquainted with him?

A. For about the past twelve years.

Interrogatory No. 4. Have you ever been employed by plaintiff, Andrew Grosvold?

A. Yes.

Interrogatory No. 5. In whose employ were you during the month of September, 1914?

A. Mr. Grosvold's.

Interrogatory No. 6. If in answer to the last interrogatory you have stated you were in the employ of plaintiff, Andrew Grosvold, state where you were so employed during the time mentioned in said interrogatory?

A. On Little Koniuji Island.

Interrogatory No. 7. If in answer to the last interrogatory you have said that you were employed on Little Koniuji Island, when did you go on said Island during said period mentioned in Interrogatory No. 5?

A. On the 1st day of said month. [127]

Interrogatory No. 8. Was any one on Little Koniuji Island when you went thereon during the time mentioned in interrogatory 5?

A. Yes.

Interrogatory No. 9. If in answer to the last interrogatory you have answered "yes," state who was on the island, and how long they remained?

A. George Myers. He left when I got there.

Interrogatory No. 10. What were your duties while on Little Koniuji Island?

A. I was supposed to find out in what condition things were on the Island, and also to keep trespassers from coming on the Island, and also to look after any foxes that Mr. Grosvold might plant on the Island.

Interrogatory No. 11. How long did you remain on Little Koniuji Island?

A. I remained on the Island until December 4th, 1914.

Interrogatory No. 12. Were you in the employ of plaintiff, Andrew Grosvold during the whole of the time you were on Little Koniuji Island?

A. Yes.

Interrogatory No. 13. Are you acquainted with defendant, F. E. Whelpley?

A. Yes.

Interrogatory No. 14. While you were on Little Koniuji Island did defendant, F. E. Whelpley, or his agents come thereon?

A. Yes, they did.

Interrogatory No. 15. If in answer to the last interrogatory you have answered that they did, state at what time or times they came?

A. On September 26th, 1914.

Interrogatory No. 16. How long did they remain on Little Koniuji? [128]

A. Mr. Whelpley left on the same day, but one of his men, John McAdam was there till November 3d, 1914. Mr. Whelpley's other man, Konrad Syvertsen was there when I left. John Gardner, Albert Cush-

ing, and Peter Watanabe came down to the Island on October 30th, 1914, and they left November 3d, 1914, taking with them 13 live blue foxes. They being so far as I could make out 7 males and 6 females. Albert Cushing and Nakita Polutoff came on November 19th, and left on November 28th, 1914, taking with them 10 live blue foxes.

Interrogatory No. 17. Did defendant, F. E. Whelpley trap any foxes on Little Koniuji while you were there, and after September 1, 1914?

A. Yes.

Interrogatory No. 18. Did plaintiff, Andrew Grosvold send any one else to Little Koniuji while you were there, and after September 1, 1914?

A. Yes.

Interrogatory No. 19. If you have answered yes to the last interrogatory, state his name, and when he came to Little Koniuji Island?

A. Vazillie Steclanikoff. He came to the island October 7th, 1914.

CHARLES CHRISTIANSEN.

Subscribed and sworn to before me at Unga, Alaska, this 1st day of May, 1916.

[Commissioners' Seal] F. C. DRIFFIELD,

U. S. Commissioner, Unga, Alaska. [129]

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Plaintiff's Interrogatories Propounded
to S. O. Casler, by James & Wooley, Attorneys
for Plaintiff.**

No. 1. What is your name, age, residence, and business?

A. My name is S. O. Casler. I am thirty-eight years of age. I reside at Unga, Alaska. I am U. S. Deputy Marshal for the Unga-Peninsula Precinct.

No. 2. Are you acquainted with the Fundy Fox Company Limited?

A. I know of such a firm. I am not acquainted with any of its members back east, but I have personally met two of their agents, Mr. F. E. Whelpley and Mr. C. D. Colwell.

No. 3. Do you know whether or not the Fundy Fox Company Limited was ever in possession of Little Koniuji Island?

A. I know that it was either the Fundy Fox Company Limited or the Provincial Fox Company, which was purported to be a subsidiary company of the Fundy Fox Company, that was in possession, as Whelpley and Colwell acted for both Companies, at different times.

No. 4. If you have answered yes to the above interrogatory state when it was in such possession of Little Koniuji Island?

A. I found them in possession when I arrived here on March 31st, 1914.

No. 5. Who, if any one, was in possession of Little Koniuji Island, in behalf of the Fundy Fox Company Limited from Feb. 1, 1914, until September 1, 1914?

A. When I arrived here Mr. Whelpley was in possession, but later Mr. Colwell took possession until September, 1914. [130]

No. 6. Did the Fundy Fox Company Limited abandon Little Koniuji Island?

A. That I do not know.

No. 7. If you have answered "yes" to the last interrogatory, state in whose favor the abandonment was made? A. ———.

No. 8. Who took possession of Little Koniuji when the Fundy Fox Company Limited abandoned it?

A. I do not know that it was abandoned, but I do know that when Mr. Colwell left the Island, that Mr. Grosvold put his men in charge of the Island.

No. 9. When did the Fundy Fox Company Limited abandon Little Koniuji Island?

A. I do not know that they abandoned the Island, but they left it about September, 1914.

No. 10. Do you know how the Fundy Fox Company Limited acquired possession of Little Koniuji Island, or how their predecessor the Fundy Fox Company acquired possession?

A. Although I have seen the record of a Bill of

Sale of the island from Lawrence Reid to F. E. Whelpley, it is the general impression around here that the money paid for same was furnished by the Fundy Fox Company, as I know it to be a fact that the Fundy Fox Company paid bills that had accrued in connection with the island up to the time that Mr. Colwell left, and Mr. Whelpley told me that he had been a member of the Fundy Fox Company and had sold out his interests in said company. The Court Records of this Precinct will show that suit was entered against the Fundy Fox Company by one Wm. Gardner in September, 1914, and that 8 foxes from the island were attached and sold upon the writ of execution.

S. O. CASLER.

Subscribed and sworn to before me at Unga, Alaska, this 1st day of May, 1916.

[Commissioners' Seal] F. C. DRIFFIELD,
United States Commissioner, Unga, Alaska. [131]

Due service of a copy of the within interrogatories on the taking of the depositions of George Elmo, Sam Dupree, Charley Christiansen, Hjalmar Christiansen, A. S. Catlin, and S. O. Casler, and due service of the cross-interrogatories attached hereto of plaintiff is hereby admitted this 20th and 21st days of April, 1916.

J. LINDLEY GREEN,
One of the Attorneys for Defendant. [132]

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Defendant's Cross-Interrogatories
Propounded to Hjalmar Christiansen.**

No. 1. Where did the foxes come from which you say were turned loose on Little Koniushi?

A. From Chernoboura Island on the East-Side.

No. 2. How do you know that the foxes you placed on Little Koniushi Island were the property of Grosvold?

A. I have always understood that the foxes on Chernoboura Island belonged to Mr. Grosvold, and these foxes were taken from said island.

No. 3. Did you place any marks on the foxes that you turned loose so that you could distinguish them from other foxes of the same kind? A. No.

No. 4. Did you examine the foxes trapped by Whelpley so that you can tell whether any of them were the foxes you placed on the Island?

A. No, I did not.

HJALMAR CHRISTIANSEN,

Subscribed and sworn to before me at Unga, Alaska, this 29th day of April, 1916.

[Commissioner's Seal] F. C. DRIFFIELD,

United States Commissioner, Unga, Alaska.

Due Service of a copy of the above interrogatories is hereby acknowledged this 21st day of April, 1916.

JAMES & WOOLEY,
Attorney for Plaintiff. [133]

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Defendant's Interrogatories Propounded
to John Gardner.**

Interrogatory No. 1. Where are you living at the present time?

A. Unga, Alaska.

No. 2. Is the place where you live in or near the Shamagin Group of Islands in Alaska?

A. It is one of the Shumagin Group.

No. 3. Do you know whether or not Little Koniushi Island is one of the Shamagin Group?

A. Yes, it is.

No. 4. How long have you lived in that part of Alaska? A. All of my life.

No. 5. Do you know whether Little Koniushi Island has ever been used for the purpose of propagation of blue foxes or not? A. Yes, it has.

No. 6. State if you can, about how long that island has been occupied for the purposes of propagating blue foxes?

A. As far as I can remember for about the past 18 or 19 years.

No. 7. Do you know whether or not one Laurence Reid ever occupied Little Koniushi Island and used it for propagating blue foxes? A. Yes, he did.

No. 8. If you answer "Yes" to interrogatory No. 7, state if you know how long said Laurence Reid occupied said island for the purpose of propagating foxes? A. For about 8 years. [134]

No. 9. State if you know when the said Laurence Reid took possession of said island for the purpose of propagating blue foxes and what disposition he made of said island when he left it?

A. I do not know the year Mr. Reid took possession of the island, but I know that he sold out to Mr. Whelpley.

No. 10. State if you know what improvements the same Laurence Reid had on the island at the time he left it and as near as you can the number of blue foxes he had thereon.

A. At Northeast Harbor he had a living house, a warehouse, and a bathhouse. At Sandy Cove he had a Barabara. I should judge there were about one hundred pair of foxes on the island at the time.

No. 11. Do you know whether or not Laurence Reid's possessory right to the use of the island for propagating blue foxes was ever questioned while he was occupying and using it for that purpose?

A. No, I do not.

No. 12. Was his title to the improvements and the blue foxes situated thereon ever questioned to your knowledge? A. No.

No. 13. If Laurence Reid's right to the possession of said island or to the improvements and blue foxes situate thereon had ever been questioned, you would have known it would you not.

A. I cannot tell.

No. 14. If in your answer to interrogatory No. 10 you state that Laurence Reid sold his right to said island and the improvements situate thereon, and the blue foxes on said island, to F. E. Whelpley, did said Reid deliver to said Whelpley peaceable possession to said island and the improvements and foxes situated thereon? A. Yes, he did. [135]

No. 15. State as near as you can the nature and kind of improvements and the number of blue foxes on said island at the time said Reid sold the same to said Whelpley.

A. My answer would be the same as in Answer No. 10.

No. 16. If you state that said Laurence Reid sold his right to the possession of said island and the improvements and foxes situated thereon to F. E. Whelpley, was Whelpley's right to said island and to the improvements and foxes situated thereon ever questioned before Grosvold claimed the right to the possession of said island under what he, Grosvold, claimed to be a lease to him from the United States for the island?

A. No, it was not.

No. 17. Did Whelpley, to your knowledge, ever abandon said island or the improvements or blue foxes thereon? A. No.

No. 18. Did said Whelpley, to your knowledge,

ever recognize Grosvold as having any right whatever to the possession of said island or to the improvements or blue foxes situated thereon?

A. No.

No. 19. Has Little Koniushi been occupied continuously for the purpose of propagating foxes ever since it was taken up for that purpose? A. Yes.

No. 20. Do you know whether or not there were any blue foxes on Little Koniushi island prior to the time you state that said island was taken up and occupied for the purpose of propagating blue foxes thereon? A. There were not.

JOHN GARDNER.

Subscribed and sworn to before me at Unga, Alaska, this 1st day of May, 1916.

[Commissioner's Seal] F. C. DRIFFIELD,
United States Commissioner, Unga, Alaska. [136]

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Defendant's Interrogatories Propounded
to Harry Richards.**

Interrogatory No. 1. Where are you living at the present time?

A. Unga, Alaska.

No. 2. Is the place where you live in or near the Shamagin Group of Islands in Alaska.

A. Is one of the Shumagin Group.

No. 3. Do you know whether or not Little Koniushi Island is one of the Shamagin Group?

A. Yes, it is.

No. 4. How long have you lived in that part of Alaska? A. Since the year 1886.

No. 5. Do you know whether Little Koniushi Island has ever been used for the purpose of propagation of blue foxes or not? A. Yes, it has.

No. 6. State if you can, about how long that island has been occupied for the purposes of propagating blue foxes?

A. As far as I know, since 1895.

No. 7. Do you know whether or not one Laurence Reid ever occupied Little Koniushi Island and used it for propagating blue foxes? A. Yes, he did.

No. 8. If you answer "Yes" to interrogatory No. 7, state if you know how long said Laurence Reid occupied said island for the purpose of propagating foxes?

A. I know that Mr. Reid was on the Island until he sold out.

No. 9. State if you know when the said Laurence Reid took possession of said Island for the purpose of propagating blue foxes and what disposition he made of said island when he left it? [137]

A. I think Mr. Reid took possession of the Island in 1904. He later sold it to Mr. Whelpley.

No. 10. State if you know what improvements

said Laurence Reid had on the island at the time he left it and as near as you can the number of blue foxes he had thereon.

A. I do not know.

No. 11. Do you know whether or not Laurence Reid's possessory right to the use of the island for propagating blue foxes was ever questioned while he was occupying and using it for that purpose?

A. I do not know.

No. 12. Was his title to the improvements and the blue foxes situated thereon ever questioned to your knowledge? A. Not as far as I know.

No. 13. If Laurence Reid's right to the possession of said island or to the improvements and blue foxes situate thereon had ever been questioned, you would have known it would you not.

A. That, I cannot say.

No. 14. If in your answer to interrogatory No. 10, you state that Laurence Reid sold his right to said island and the improvements situate thereon, the blue foxes on said island, to F. E. Whelpley, did said Reid deliver to said Whelpley peaceable possession to said island and the improvements and foxes situated thereon?

A. I never heard of any dispute in regard to Mr. Whelpley taking possession of the Island from Mr. Reid.

No. 15. State as near as you can the nature and kind of improvements and the number of blue foxes on said island at the time said Reid sold the same to said Whelpley. A. I cannot say.

No. 16. If you state that said Laurence Reid sold

his right to the possession of said island and the improvements and foxes situated thereon to F. E. Whelpley, was Whelpley's right to said island and to the improvements and foxes situated thereon ever questioned before Grosvold claimed the right to the possession of said island under what he, Grosvold, claimed to be a lease to him from the United States for the island? A. I cannot say. [138]

No. 17. Did Whelpley, to your knowledge, ever abandon said island or the improvements or blue foxes thereon? A. Not to my knowledge.

No. 18. Did said Whelpley, to your knowledge, ever recognize Grosvold as having any right whatever to the possession of said island or to the improvements or blue foxes situated thereon?

A. Not to my knowledge.

No. 19. Has Little Koniushi been occupied continuously for the purpose of propagating foxes ever since it was taken up for that purpose?

A. Yes, it has.

No. 20. Do you know whether or not there were any blue foxes on Little Koniushi Island prior to the time you state that said island was taken up and occupied for the purpose of propagating blue foxes thereon?

A. I don't know.

HARRY RICHARDS,

Subscribed and Sworn to before me at Unga, Alaska, this 1st day of May, 1916.

[Commissioner's Seal] F. C. DRIFFIELD.

United States Commissioner, Unga, Alaska. [139]

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Defendant's Interrogatories Pro-
pounded to George Cushing.**

Interrogatory No. 1. Where are you living at the present time?

A. Unga, Alaska.

No. 2. Is the place where you live in or near the Shamagin Group of Islands in Alaska.

A. Yes, it is.

No. 3. Do you know whether or not Little Koniushi Island is one of the Shamagin Group?

A. Yes, it is.

No. 4. How long have you lived that part of Alaska?

A. Since 1897.

No. 5. Do you know whether Little Koniushi Island has ever been used for the purpose of propagation of blue foxes or not?

A. Yes, it has.

No. 6. State if you can, about how long this island has been occupied for the purposes of propagating blue foxes?

A. Since about the year 1895.

No. 7. Do you know whether or not one Laurence

Reid ever occupied Little Koniushi Island and used it for propagating blue foxes?

A. Yes, he did.

No. 8. If you answer "Yes" to interrogatory No. 7, state if you know how long said Laurence Reid occupied said island for the purpose of propagating foxes?

A. As far as I can remember, Laurence Reid occupied Little Koniuji Island for himself, about the year 1903, and held it to the year 1913. [140]

No. 9. State if you know when the said Laurence Reid took possession of said Island for the purpose of propagating blue foxes and what disposition he made of said island when he left it?

A. Mr. Reid told me that he sold it to F. E. Whelpley.

No. 10. State if you know what improvements the said Laurence Reid had on the island at the time he left it and as near as you can the number of blue foxes he had thereon.

A. As far as I can remember he had a cabin, a bath-house, and a small warehouse at Northeast Harbor, at Sandy Cove he had a small Barabara.

No. 11. Do you know whether or not Laurence Reid's possessory right to the use of the island for propagating blue foxes was ever questioned while he was occupying and using it for that purpose?

A. It was never questioned to my knowledge.

No. 12. Was his title to the improvements and the blue foxes situated thereon ever questiond to your knowledge?

A. It was not.

No. 13. If Laurence Reid's right to the possession of said island or to the improvements and blue foxes situate thereon had ever been questioned, you would have known it would you not.

A. Yes, I would have heard of it.

No. 14. If in your answer to interrogatory No. 10, you state that Laurence Reid sold his right to said island and the improvements situate thereon, and the blue foxes on said island, to F. E. Whelpley, did said Reid deliver to said Whelpley peaceable possession to said island and the improvements and foxes situated thereon?

A. He did.

No. 15. State as near as you can the nature and kind of improvements and the number of blue foxes on said island at the time said Reid sold the same to said Whelpley.

A. As far as I know the property described in answer to interrogatory No. 10, was still on the island when Mr. Reid sold to — [141]

Mr. WHELPLEY.—It would be impossible for me to make any answer as to the foxes thereon.

No. 16. If you state that said Laurence Reid sold his right to the possession of said island and the improvements and foxes situated thereon to F. E. Whelpley, was Whelpley's right to said island and to the improvements and foxes situated thereon ever questioned before Grosvold claimed the right to the possession of said island under what he, Grosvold, claimed to be a lease to him from the United States for the island? A. Not to my knowledge.

No. 17. Did Whelpley, to your knowledge, ever

abandon said island or improvements or blue foxes thereon? A. Not to my knowledge.

No. 18. Did said Whelpley, to your knowledge, ever recognize Grosvold as having any right whatever to the possession of said island or to the improvements or blue foxes situated thereon?

A. No, not to my knowledge.

No. 19. Has Little Koniushi been occupied continuously for the purpose of propagating foxes ever since it was taken up for that purpose?

A. Yes, it has.

No. 20. Do you know whether or not there were any blue foxes on Little Koniushi island prior to the time you state that said island was taken up and occupied for the purpose of propagating blue foxes thereon?

A. As far as I know there were no foxes on the island, before said island was taken up for the propagation of foxes.

G. A. CUSHING.

Subscribed and sworn to before me at Unga, Alaska, this 29th day of April, 1916.

[Commissioner's Seal.] [142]

F. C. DRIFFIELD,
United States Commissioner, Unga, Alaska.

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Defendant's Interrogatories Propounded
to John Gardner, Only.**

Interrogatory No. 1. Had you been working for F. E. Whelpley as caretaker of Little Koniushi Island prior to and up to July 1st, 1914, at the time Grosvold claims to have received a lease to said island from the U. S. Government? A. Yes.

No. 2. If you answer "Yes" to the above question, do you know about how many pair of blue foxes there were on the island at that time, and if so, please state how many pair of said foxes there were on the island as near as you can?

A. At the time Mr. Grosvold claimed to have received the lease of the island, I should judge there were some 70 pair of foxes on the island.

No. 3. Have you been working for Mr. Whelpley as caretaker of Little Koniushi Island this winter last past? A. Yes.

No. 4. If you answer "Yes" to interrogatory No. 3, did you while so working make an effort to ascertain the number of blue foxes on the island at the time the season for trapping foxes closed, March 1st, 1916, and if so, please state, if you know, about how

many pair of blue foxes in your judgment there were on the island at that time?

A. At that date, both Mr. Whelpley and I figured that there must be 70 pairs of foxes thereon.

No. 5. Do you remember a conversation between Whelpley and Grosvold which took place in Grosvold's office at Sand Point on Popoff [143] Island on the 26th day of Sept., 1914, when you, Whelpley and Grosvold being present, Mr. Whelpley having taken you with him to notify Grosvold that he had employed you as caretaker of Little Koniushi Island?

Answer yes or no. A. Yes.

No. 6. If you answer "Yes" to the above question, please state the conversation as near as you can?

A. All I can remember of said conversation is that Mr. Whelpley told Mr. Grosvold that I was employed by him, Whelpley, as caretaker of Little Koniuji Island, and for him, Grosvold, not to bother me, but to leave me alone.

No. 7. Did Whelpley at that time tell Grosvold that he had hired you to look after and take care of Little Koniushi Island for him, to trap foxes that winter and care for the stock not trapped, and that he, Grosvold, must not place any foxes on the island, and if he did, he, Whelpley, would keep them?

A. I remember Mr. Whelpley tell Mr. Grosvold that I was to trap foxes and also to care for the foxes not trapped. I also remember Whelpley telling Grosvold not *be* put any foxes on the island, but I do not remember Whelpley saying that he would keep any foxes that Grosvold put on the island.

JOHN GARDNER.

Subscribed and sworn to before me at Unga, Alaska, this 1st day of May, 1916.

[Commissioner's Seal.] [144]

F. C. DRIFFIELD,
United States Commissioner, Unga, Alaska.

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Defendant's Interrogatories Propounded
to Konrad Syvertsen.**

Interrogatory No. 1. Have you been working for Mr. Whelpley, the defendant, in this action, and if so, were you working for him during the months of February and March, 1916? A. Yes, I was.

No. 2. If you answer "Yes" to interrogatory No. 1, where were you working and what were you doing?

A. I was taking care of the foxes on Little Koniuji Island. I also caught foxes in the month of February.

No. 3. If in answer to interrogatory No. 2 you state you were caring for and trapping foxes on Little Koniushi and caring for the foxes not trapped, did you have an opportunity to know approximately the number of Blue Foxes on Little Koniushi Island on March 1st, 1916, and did you ascertain approximately

the number of foxes on the island at that time?

A. Yes, I did.

No. 4. If in answer to the preceding interrogatory, your answer is in the affirmative, state how many blue foxes were on said island at that time?

A. I would judge about 70 pair.

KONRAD SYVERTSEN.

Subscribed and sworn to before me at Unga, Alaska, this 1st day of May, 1916.

[Commissioner's Seal.] [145]

F. C. DRIFFIELD,

United States Commissioner, Unga, Alaska.

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Plaintiff's Cross-Interrogatories
Propounded to John Gardner.**

No. 1. How do you know that Laurence Reid ever disposed of his alleged possessory rights in Little Koniuji Island?

A. I was a witness to the transaction.

No. 2. Did you ever witness a sale by Laurence Reid of any rights which he claimed to have in Little Koniuji Island? A. Yes.

No. 3. If you have answered "Yes" to the above interrogatory, was the sale oral or in writing?

A. In writing.

No. 4. How far did you live from Little Koniuji Island when said island was in the alleged possession of Laurence Reid? A. About 75 miles.

No. 5. Were you on Little Koniuji during the year 1913? A. Yes.

No. 6. If you have answered "Yes" to the last interrogatory, state the number of visits and the length of each visit.

A. I made about 15 visits to the island, and stayed about a week at each visit.

No. 7. Where did you get your information as to the number of blue foxes on Little Koniuji when Laurence Reid is alleged to have been in possession?

A. From personal observation.

No. 8. How could you know whether or not the alleged possession of Laurence Reid of Little Koniuji Island, and his alleged title to blue foxes thereon were never questioned? A. I could not tell. [146]

No. 9. How can you know of any alleged continuous occupancy of Little Koniuji Island?

A. From personal knowledge.

No. 10. How do you know when Little Koniuji is first alleged to have been occupied if you have said you do know? A. From personal knowledge.

JOHN GARDNER.

Subscribed and sworn to before me at Unga, Alaska, this 1st day of May, 1916.

[Commissioner's Seal.] [147]

F. C. DRIFFIELD,

United States Commissioner, Unga, Alaska.

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Plaintiff's Cross-Interrogatories
Propounded to Harry Richards.**

No. 1. How do you know that Laurence Reid ever disposed of his alleged possessory rights in Little Koniuji Island? A. Mr. Reid told me himself.

No. 2. Did you ever witness a sale by Laurence Reid of any rights which he claimed to have in Little Koniuji Island? A. I did not.

No. 3. If you have answered "Yes" to the above interrogatory, was the sale oral or in writing?

A. ———.

No. 4. How far did you live from Little Koniuji Island when said island was in the alleged possession of Laurence Reid?

A. I should judge between 50 or 60 miles.

No. 5. Were you on Little Koniuji during the year 1913? A. I was not.

No. 6. If you have answered "Yes" to the last interrogatory, state the number of visits and the length of each visit? A. ———.

No. 7. Where did you get your information as to the number of blue foxes on Little Koniuji when Laurence Reid is alleged to have been in possession?

A. I got no information whatever.

No. 8. How could you know whether or not the alleged possession of Laurence Reid of Little Koniuji Island, and his alleged title to blue foxes thereon were never questioned?

A. Only by common report.

No. 9. How can you know of any alleged continuous occupancy of [148] Little Koniuji Island?

A. From personal knowledge and general information.

No. 10. How do you know when Little Koniuji is first alleged to have been occupied if you have said you do know?

A. I was calling at the island at the time.

HENRY RICHARDS.

Subscribed and sworn to before me at Unga, Alaska, this 1st day of May, 1916.

[Commissioner's Seal.] [149]

F. C. DRIFFIELD,

United States Commissioner, Unga, Alaska.

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Answers to Plaintiff's Cross-Interrogatories
Propounded to George Cushing.**

No. 1. How do you know that Laurence Reid ever disposed of his alleged possessory rights in Little Koniuji Island? A. Mr. Reid told me so.

No. 2. Did you ever witness a sale by Laurence Reid of any rights which he claimed to have in Little Koniuji Island? A. No, I did not.

No. 3. If you have answered "Yes" to the above interrogatory, was the sale oral or in writing?

A. ———.

No. 4. How far did you live from Little Koniuji Island when said island was in the alleged possession of Laurence Reid?

A. Between 60 and 70 miles, I should judge.

No. 5. Were you on Little Koniuji during the year 1913? A. No, I was not.

No. 6. If you have answered "Yes" to the last interrogatory, state the number of visits and the length of each visit? A. ———.

No. 7. Where did you get your information as to the number of blue foxes on Little Koniuji when Laurence Reid is alleged to have been in possession?

A. I cannot say anything as to the number of foxes on the island.

No. 8. How could you know whether or not the alleged possession of Laurence Reid of Little Koniuji Island, and his alleged title to blue foxes thereon were never questioned?

A. From Mr. Reid himself. [150]

No. 9. How can you know of any alleged continuous occupancy of Little Koniuji Island?

A. From information and general public knowledge.

No. 10. How do you know when Little Koniuji is first alleged to have been occupied if you have said you do know?

A. Because I have known some of those who have occupied it. I have also occupied it myself.

G. A. CUSHING.

Subscribed and sworn to before me at Unga, Alaska, this 29th day of April, 1916.

[Commissioner's Seal.] [151]

F. C. DRIFFIELD,

United States Commissioner, Unga, Alaska.

United States of America,

Territory of Alaska,—ss.

Certificate of U. S. Commissioner to Depositions.

I, F. C. DRIFFIELD, United States Commissioner in and for the Territory of Alaska, and the Commissioner appointed by the annexed Stipulation, do hereby certify that the witnesses A. S. Catlin, Hjalmar Christiansen, Charles Christiansen, S. O. Casler, John Gardner, Harry Richards, George Cushing, and Konrad Syvertsen, in the foregoing depositions named, were by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that said depositions were taken at Unga, in said Territory of Alaska, on the 29th day of April, 1916, and the 1st day of May, 1916; that said depositions were reduced to writing, and when completed were

carefully read by each of said witnesses, and after being by them corrected were by them subscribed in my presence.

In witness whereof, I have hereunto set my hand and affixed my Official Seal at my office in said Territory of Alaska, on this 1st day of May, 1916.

F. C. DRIFFIELD,

United States Commissioner in and for the Territory of Alaska, and the Commissioner, appointed by the foregoing annexed stipulation. [152]

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Permission to Take Deposition of F. E. Williams.

To Henry S. Culver, United States Consul, Saint John, New Brunswick, Dominion of Canada,
Greeting:

Whereas, it has been agreed and stipulated by and between the respective parties to the above-entitled cause, that a commission shall issue from the office of the Clerk of the above-entitled court to take the deposition of F. E. WILLIAMS, of Saint John, New Brunswick, Dominion of Canada, and having confidence in your prudence and fidelity, you are hereby appointed a commissioner to take the deposition of

said witness, and you are authorized and empowered, at certain days and places, to be by you for that purpose appointed, diligently to examine said witness in answer to the interrogatories annexed to this commission, and upon his corporal oath, first taken before you, and cause the said examination of said witness to be reduced to writing and subscribed by the said witness, and then certify and return the same, annexed to this commission unto the Clerk of the above-entitled court, with all convenient speed, enclosed in a sealed envelope directed to said clerk, and forwarded to him by the usual channel of conveyance.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of said court at Seward, Territory of Alaska, this 12th day of April, A. D. 1916.

[Seal of the District Court.] [153]

ARTHUR LANG,

Clerk.

By Robert L. Wever,

Deputy Clerk.

Commission to Take Depositions of Witnesses.

CONSULATE OF THE UNITED STATES.

Saint John, New Brunswick,

Dominion of Canada.

I, Henry S. Culver, Consul of the United States of America, at Saint John, New Brunswick, Dominion of Canada, duly commissioned to take the testimony of F. E. Williams of the City of Saint John in the above-entitled case now pending in the District Court, Third Division, for the Territory of Alaska,

do hereby certify that the above-named F. E. Williams was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the above-entitled case, and his foregoing deposition by him duly subscribed was reduced to writing by Ina B. Rathburn, a disinterested person, and written in my presence and the presence of the witness, and subscribed by the witness in my presence. That said deposition was taken on the 31st day of May, 1916, at said Consulate Office, and that I am not counsel, attorney or relative of either party to said action or otherwise interested in the event of said action.

IN TESTIMONY WHEREOF I have hereunto set my hand and official seal as Consul as aforesaid at the City of Saint John, New Brunswick, this 31st day of May, one thousand nine hundred and sixteen.

(Signed) HENRY S. CULVER,

Consul of the United States,

Commissioner.

[American Consulate Seal] [154]

*In the District Court for the Territory of Alaska,
Third Division.*

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Answer of F. E. Williams to Interrogatories.

Answers to Interrogatories Propounded to F. E. Williams by the Plaintiff Before Henry S. Culver, Consul of the United States, of Saint John, New Brunswick, Canada, Commissioner, for Taking the Deposition of Said F. E. Williams.

Interrogatory No. 1. What is your name, age, residence and business?

Answer to Interrogatory No. 1. Frank E. Williams; 53 Germain Street, Saint John; merchant.

Interrogatory No. 2. In what business were you engaged from and including the first day of July, 1913, to and including the first day of September, 1914?

Answer to Interrogatory No. 2. Same.

Interrogatory No. 3. Were you connected with the Fundy Fox Company during the period mentioned in Interrogatory two, or any part of said period?

Answer to Interrogatory No. 3. Yes. Neither the private or incorporated company.

Interrogatory No. 4. If, in reply to the last interrogatory, you have said you were connected with the Fundy Fox Company, state what position you held with said company and during what period of time? [155]

Answer to Interrogatory No. 4. I was secretary, treasurer and manager of Fundy Fox Co. incorporated. I was secretary, treasurer and manager at the eastern end of Fundy Fox Co., *unincorporated*.

Interrogatory No. 5. Was the Fundy Fox Company dissolved and succeeded by the Fundy Fox Company, Limited?

Answer to Interrogatory No. 5. Yes.

Interrogatory No. 6. If in answer to the last interrogatory you have said that it was, state when such dissolution and succession took place?

Answer to Interrogatory No. 6. Beginning year 1914, about January or February.

Interrogatory No. 7. State whether or not you became an officer of the Fundy Fox Company, Limited?

Answer to Interrogatory No. 7. I did.

Interrogatory No. 8. If in answer to the last interrogatory you have said that you became an officer of the Fundy Fox Company, Limited, state what office you held and for what period of time you so held office?

Answer to Interrogatory No. 8. I was secretary, treasurer and manager from time of its incorporation to the present time.

Interrogatory No. 9. State whether or not the Fundy Fox Company was engaged in the propagation of foxes on Little Koniuji Island, of the Shumagin Group, Territory of Alaska, during the period mentioned in Interrogatory two, or any part of said period?

Answer to Interrogatory No. 9. No. Never.
[156]

Interrogatory No. 10. If in answer to the last interrogatory, you have stated that the Fundy Fox

Company was engaged in the propagation of foxes on said Little Koniuji Island, state the time it was so engaged?

Answer to Interrogatory No. 10. No.

Interrogatory No. 11. After the dissolution of the Fundy Fox Company, and the succession thereto by the Fundy Fox Company, Limited, did the latter company continue to engage in the propagation of foxes on said Little Koniuji Island?

Answer to Interrogatory No. 11. No. Never engaged.

Interrogatory No. 12. Did the Fundy Fox Company, or the Fundy Fox Company, Limited, or both, employ defendant F. E. Whelpley during the period mentioned in Interrogatory 2, or any part thereof?

Answer to Interrogatory No. 12. Yes. Whelpley was partner and drew a salary.

Interrogatory No. 13. If in answer to the last interrogatory you have stated that defendant F. E. Whelpley was in the employ of either of said companies mentioned in the last interrogatory, or both, state the nature of the employment?

Answer to Interrogatory No. 13. As manager in Alaska.

Interrogatory No. 14. Was the defendant F. E. Whelpley employed to care for the interests of the companies mentioned in interrogatory 12, or either of them, on Little Koniuji Island, Territory of Alaska, during the time mentioned in Interrogatory 2, or any part of said time? [157]

Answer to Interrogatory No. 14. No. Because

said companies had no interests in said island except as agents for the Provincial Fox Company.

Interrogatory No. 15. If in answer to the last interrogatory you have said that defendant F. E. Whelpley was so employed, state the time of the employment?

Answer to Interrogatory No. 15. Was not employed.

Interrogatory No. 16. Was one Chesley D. Colwell employed by the Fundy Fox Company or the Fundy Fox Company Limited during the period, or any part thereof, mentioned in Interrogatory two?

Answer to Interrogatory No. 16. He was employed.

Interrogatory No. 17. If in answer to the last interrogatory you have stated that said Chesley D. Colwell was so employed, state the nature of the employment, and for what period employed?

Answer to Interrogatory No. 17. To look after Fundy Fox Company's Limited, interests in Alaska, from 1914 to 1915.

Interrogatory No. 18. State whether or not said Chesley D. Colwell was sent to the Territory of Alaska to take charge of the affairs of the Fundy Fox Company Limited after the dissolution of the Fundy Fox Company, and the succession thereto by the Fundy Fox Company Limited?

Answer to Interrogatory No. 18. Yes.

Interrogatory No. 19. If in answer to the last interrogatory you have stated that Chesley D. Colwell was so sent to the Territory of Alaska, state whether or not he took charge of said Little Koniuji

Island in the place and stead of defendant F. E. Whelpley? [158]

Answer to Interrogatory No. 19. The Provincial Fox Company, Limited instructed Mr. Colwell to take charge of their interests on this Island in Alaska. Explanation: Whelpley having previously purchased the Island for the Provincial Fox Company, Limited and held it in trust in his own name.

Interrogatory No. 20. Did the Fundy Fox Company Limited abandon Little Koniuji Island?

Answer to Interrogatory No. 20. No. Never held it.

Interrogatory No. 21. If in reply you have stated that said Fundy Fox Company Limited did abandon Little Koniuji Island, state the time when said abandonment took place?

Answer to Interrogatory No. 21. No.

Interrogatory No. 22. In whose favor was the abandonment by the said Fundy Fox Company Limited made?

Answer to Interrogatory No. 22. No abandonment made.

CROSS-INTERROGATORIES PROPOUNDED TO WITNESS BY DEFENDANT.

Answer of F. E. Williams to Cross-Interrogatories.

Interrogatory No. 1. Is it not a fact, Mr. Williams, that the defendant F. E. Whelpley, did, on or about the 8th day of May, 1913, purchase in his own name as trustee for the Provincial Fox Company, of one Laurence Reid, all of the blue foxes, buildings, and other improvements on Little Koniuji Island, and the Reids possessory right thereto, and at the

time of making said purchase took possession of said island?

A. Yes.

No. 2. Is it not a fact that the defendant has at all times since he made said purchase held the legal title to all of said property in his own name? [159]

A. Yes, in trust for Provincial Fox Company, Limited.

No. 3. Is it not also a fact that the defendant has held the possession of said island either in person or by his legal representative or representatives at all times since he made said purchase up to the present time?

A. Yes.

No. 4. Has the defendant to your knowledge ever abandoned his possessory right to said island or to the improvements or property situated thereon.

A. No. Not as trustee.

No. 5. To your knowledge, has the defendant ever consented to or permitted any one else to take possession of said island?

A. Not to my knowledge.

No. 6. Is it not a fact that at all times since said purchase the defendant has claimed and asserted his legal right to the possession of said island and all the property and improvements situated thereon?

A. Yes, so far as I know.

(Signed) FRANK E. WILLIAMS. [160]

Plaintiff's Exhibit "A," #804.

(Plaintiff's Exhibit "A" is identical with the exhibit attached to plaintiff's complaint, and is therefore omitted here.) [161]

**Plaintiff's Exhibit "B"—Letter, February 3, 1916,
Commissioner to Grosvold.**

C. W. S.

E

**DEPARTMENT OF COMMERCE.
BUREAU OF FISHERIES
WASHINGTON**

(Address all communica-
tions to Commissioner
of Fisheries, Washing-
ton, D. C.)

February 3, 1916.

Received Apr. 14, 1916.

Mr. A. Grosvold,
Sand Point, Alaska.

Dear Sir:

In accordance with the terms of an agreement entered into with you leasing Little Koniuji Island of the Shumagin group, Territory of Alaska, for the period of five years beginning July 1, 1914, for the sum of \$1,025.00 payable at the rate of \$205.00 per annum, the first payment on this agreement has been received and deposited in the Treasury. The payment for the fiscal year 1916 was due on July 1, 1915, but has not been received. It is requested that the \$205.00 due thereon be remitted at an early date.

Very truly yours,

H. M. SMITH,
Commissioner. [162]

**Plaintiff's Exhibit "C"—Letter, January 19, 1914,
Fundy Fox Co. to Grosvold.**

Cable Address, FUNDYFOX,
Codes: A B C, 5th Edition, and Western Union.
FUNDY FOX CO.,
FOX RANCHING,
Dealers in Silver Black Foxes,
Cross or Patch Foxes.
Head Office, 96 Princess Street,
St. John, N. B.

Branch Office, 45 Milk St.,
BOSTON, MASS.
Jan. 19, 1914.

Andrew Grosvold, Esq.,
Unga, Alaska.

Dear Sir:

This is to inform you that Mr. F. E. Whelpley who was formerly in our employ is no longer connected with us in any of our enterprizes.

We will have a new Manager shortly in the West and will notify you as to who this new Manager will be in a few days.

We hope our new Manager will be more successful in getting along with your good self than Mr. Whelpley was. We wish to have the good-will of all the dealers and men of Unga and elsewhere and hope we will do some business in the future to our mutual advantage.

We are,

Yours truly,

FUNDY FOX CO. [163]

**Plaintiff's Exhibit "D"—Letter, January 21, 1914,
Fundy Fox Co., Ltd., to Grosvold.**

Cable Address, FUNDYFOX,

Codes: A B C, 5th Edition, and Western Union.

FUNDY FOX CO.,

FOX RANCHING,

Dealers in, Silver Black Foxes,

Cross or Patch Foxes.

Head Office, 96 Princess Street,

ST. JOHN, N. B.

Branch Office, 45 Milk St.,

BOSTON, MASS.

Jan. 21, 1914.

Andrew Grosvold, Esq.,

Unga, Alaska.

Dear Sir:

This is to notify you that Mr. Chesley D. Colwell has been appointed our representative in charge of our Alaskan business and we hope to have your assistance and good-will in any business he may undertake between the Fundy Fox Co., Ltd., and your good self.

We are,

Yours truly,

FUNDY FOX CO., LTD. [164]

**Plaintiff's Exhibit "E"—Authenticated Copy of
Letter, February 26, 1896, Acting Secretary to
Neumann.**

C. W. S.

DEPARTMENT OF COMMERCE.

Washington, May 11, 1916.

I HEREBY CERTIFY that the annexed is a true copy of the original letter to Mr. Rudolph Neumann, Unalaska, Alaska, dated February 26, 1896, on file in the Bureau of Fisheries.

H. M. SMITH,
Commissioner of Fisheries.

OFFICE OF SECRETARY.

I HEREBY CERTIFY that H. M. Smith, who signed the foregoing certificate, is now, and was at the time of signing, Commissioner of Fisheries, and that full faith and credit be given his certification as such.

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of Commerce to be affixed this 12th day of May, one thousand nine hundred and sixteen.

[Seal]

E. F. SWEET,
Assistant Secretary of Commerce.

TREASURY DEPARTMENT.

Office of the Secretary.

Washington, D. C., February 26, 1896.

Mr. Rudolph Neumann,
Unalaska, Alaska.

Sir:

Under authority contained in the Act of Con-

gress approved March 3, 1879, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes" and in consideration of the payment of the sum of \$100 per annum, the receipt of which is acknowledged hereby, permission is granted to you to occupy Little Koniushu island, Alaska, for the purpose of raising foxes during the year 1896. It is to be understood that this permission is revocable at the pleasure of the Secretary of the Treasury.

Officers of the Revenue Cutter Service, and the Collector of Customs for the District of Alaska, will be advised of this action.

Respectfully yours,

Acting Secretary. [165]

Plaintiff's Exhibit "E"—Authenticated Copy of Letter, February 24, 1897, Assistant Secretary to Newmann.

C. W. S.

DEPARTMENT OF COMMERCE.

Washington, May 11, 1916.

I HEREBY CERTIFY that the annexed is a true copy of the original letter to Mr. Rudolph Newman, dated February 24, 1897, on file in the Bureau of Fisheries.

H. M. SMITH,
Commissioner of Fisheries.

OFFICE OF THE SECRETARY.

I HEREBY CERTIFY that H. M. Smith, who signed the foregoing certificate, is now, and was at

the time of signing, Commissioner of Fisheries, and that full faith and credit should be given his certification as such.

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of Commerce to be affixed this 12th day of May, one thousand nine hundred and sixteen.

[Seal]

E. F. SWEET,
Assistant Secretary of Commerce.

February 24, 1897.

Mr. Rudolph Newman,

Sir:

Under authority contained in the Act of Congress approved March 3, 1897, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes," and in consideration of the payment of the sum of \$100, the receipt of which is acknowledged hereby, permission is granted to you to occupy Little Knoiushi Island, Alaska, for the purpose of raising foxes thereon, during the year 1897. It is to be understood that this permission is revocable at the pleasure of the Secretary of the Treasury.

Officers of the Revenue Cutter Service and the Collector of Customs at Sitka will be advised of this action.

Respectfully yours,

Assistant Secretary. [166]

**Plaintiff's Exhibit "E"—Authenticated Copy of
Letter, May 12, 1898, Assistant Secretary to
Newmann.**

C. W. S.

DEPARTMENT OF COMMERCE.

Washington, May 11, 1916.

I HEREBY CERTIFY that the annexed is a true copy of the original letter to Mr. Rudolph Newman, dated May 12, 1898, on file in the Bureau of Fisheries.

H. M. SMITH,
Commissioner of Fisheries.

OFFICE OF SECRETARY.

I HEREBY CERTIFY that H. M. SMITH, who signed the foregoing certificate, is now, and was at the time of signing, Commissioner of Fisheries, and that full faith and credit be given his certification as such.

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of Commerce to be affixed this 12th day of May, one thousand nine hundred and sixteen.

[Seal]

E. F. SWEET,
Assistant Secretary of Commerce.

TREASURY DEPARTMENT.

Office of the Secretary.

Washington, D. C., May 12, 1898.

Mr. Rudolph Newmann,

Sir:

Under authority contained in the act of Congress approved March 3, 1879, entitled "An Act making

appropriation for sundry civil expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes," and in consideration of the payment of \$100.00 the receipt of which is hereby acknowledged, permission is granted to you to occupy Little Koniushi Island, Alaska, for the purpose of raising foxes thereon during the year 1898. It is to be understood that this permission is revocable at the pleasure of the Secretary of the Treasury.

Officers of the Revenue Cutter Service, and the Collector of Customs at Sitka, Alaska, will be advised in this action.

Respectfully yours,

Assistant Secretary. [167]

Plaintiff's Exhibit "E" Authenticated Copy of Letter, May 29, 1899, Assistant Secretary to Neuman.

DEPARTMENT OF COMMERCE.

Washington, May 11, 1916.

I HEREBY CERTIFY that the annexed is a true copy of the original letter to Mr. Rudolph Neuman, c/o Bryon Andrews, Washington, D. C., dated May 29, 1899, on file in the Bureau of Fisheries.

H. M. SMITH,

Commissioner of Fisheries.

OFFICE OF THE SECRETARY.

I HEREBY CERTIFY that H. M. Smith, who signed the foregoing certificate, is now, and was at the time of signing, Commissioner of Fisheries and

that full faith and credit should be given his certification as such.

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the Seal of the Department of Commerce to be affixed this 12th day of May, one thousand nine hundred and sixteen.

[Seal]

E. F. SWEET,
Assistant Secretary of Commerce.

TREASURY DEPARTMENT,

Office of the Secretary.

Washington, D. C., May 29, 1899.

Mr. Rudolph Neuman,
c/o Bryon Andrews,
Washington, D. C.

Sir:

Under authority contained in the act of Congress approved March 3, 1879, entitled "An Act making appropriation for sundry civil expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes," and in consideration of the payment of \$100, the receipt of which is hereby acknowledged, permission is granted to you to occupy Little Knoiushi Island, Alaska, for the purpose of raising foxes thereon during the year 1899. It is to be understood that this permission is revocable at the pleasure of the Secretary of the Treasury.

Officers of the Revenue Cutter Service and the

Collector of Customs at Sitka, Alaska, will be advised of this action.

Respectfully yours,

_____,
Assistant Secretary. [168]

**Plaintiff's Exhibit "E" Authenticated Copy of
Letter August 21, 1900, Assistant Secretary to
Guild.**

C. W. S.

DEPARTMENT OF COMMERCE.

Washington, May 11, 1916.

I HEREBY CERTIFY that the annexed is a true copy of the original letter to Mr. P. K. Guild, (Estate R. Neuman), Unga, Alaska, dated August 21, 1900, on file in the Bureau of Fisheries.

H. M. SMITH,

Commissioner of Fisheries.

OFFICE OF THE SECRETARY.

I HEREBY CERTIFY that H. M. Smith, who signed the foregoing certificate, is now, and was at the time of signing, Commissioner of Fisheries and that full faith and credit should be given his certification as such.

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the Seal of the Department of Commerce to be affixed this 12th day of May, one thousand nine hundred and sixteen.

[Seal]

E. F. SWEET,

Assistant Secretary of Commerce.

Division of Special Agents.
TREASURY DEPARTMENT,
Office of the Secretary.

Washington, August 21, 1900.

Mr. P. K. Guild, (Estate R. Neuman),
Unga, Alaska.

Sir:

Under authority contained in the act of Congress approved March 3, 1879, entitled "An Act making appropriation for Sundry Civil Expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes," and in consideration of the payment of \$100, the receipt of which is hereby acknowledged, permission is granted you to occupy Little Koniushi Island, Alaska, for the purpose of raising foxes thereon for one year from January 1, 1900. It is understood that this permission is revocable at the pleasure of the Secretary of the Treasury. Officers of the Revenue Cutter Service and Collector of Customs at Sitka, Alaska, will be advised of this action.

Respectfully,

_____,
Assistant Secretary, [169]

**Plaintiff's Exhibit "F"—Letter, February 16, 1916,
Williams to Driffield.**

Cable Address: FUNDYFOX.

Codes: A. B. C. 5th Edition, and Western Union.

HEAD OFFICE:

96 Princess Street.

Ranches:

St. John, N. B.

Renforth, N. B.

FUNDY FOX COMPANY, LIMITED.

of St. John, N. B.

FOX RANCHING (Endorsed:)

Dealers in

SILVER BLACK FOXES

CROSS OR PATCH FOXES

RECEIVED.

May 13, 1916.

St. John, N. B., February 16/16.

F. C. Driffield, Commissioner,

Unga, Alaska.

Dear Sir:

This is to acknowledge your letter of January 24th, 1916, enclosing F. E. Whelpley's and John Gardner's affidavits which I hereby return. This is not a personal matter of mine, but I wish to state that F. E. Whelpley is not making a true affidavit when he says he hired a man to go to these Islands for the Fundy Fox Company. He did this for the Provincial Fox Company, Limited, to St. John, N. B., but he had no authority to do it for the Fundy Fox Company. Mr. F. E. Whelpley also took furs to the value of \$1,500 and has acknowledged receiving from the sale of

same \$750.00 but has never handed the money over to the Provincial Fox Company, Limited, but kept the same himself. One of his contentions is that he paid these men out of said funds.

Regarding John Gardiner, this man the last time he was here in St. John was given \$500.00 advance money for services and he immediately on getting West, left our employ and kept the \$500.00 which he still owes us. The Fundy Fox Company has paid all its honorable debts. Might also say that the Provincial Fox Co., Ltd., has gone into liquidation. These men however can hold F. E. Whelpley personally for their wages and they had better do so. I suppose you know something of the doings of this man Whelpley as well as Gardiner in your vicinity.

Yours truly,

F. E. WILLIAMS,

Per HWK. [170]

**Plaintiff's Exhibit "G"—Articles of Incorporation
of the Fundy Fox Company.**

STATE OF MAINE.

**CERTIFICATE OF ORGANIZATION OF A
CORPORATION UNDER THE GENERAL
LAW.**

The undersigned, officers of a corporation organized at Portland, at a meeting of the signers of the articles of agreement therefor, duly called and held at the office of Charles E. Gurney in the City of Portland, on Friday, the twenty-third day of May, A. D. 1913, hereby certify as follows:

The name of said corporation is THE FUNDY FOX COMPANY. The purposes of said corporation are: To engage in a general ranching business for the breeding and rearing of foxes and other fur-bearing animals in captivity. To buy, sell, exchange, import, export and deal in foxes and other fur-bearing animals, alive and captive, for breeding and rearing purposes, and for the production of fur for market and commercial uses and purposes. To make, execute and enter into contracts and agreements with any persons or companies having objects similar in whole or in part to this Company, for the housing, feeding, keeping, rearing, or breeding of any such captive fur-bearing animals, and for the capture and taking into captivity of wild animals for propagation and breeding purposes, and for fur. To carry on a trade and business in raw and manufactured furs, to buy, and sell skins, pelts and hides, both manufactured and unmanufactured, and transact any business relating thereto. To erect or provide upon the lands of the Company, all houses, barns, pens and other buildings, walls, yards, fences and enclosures necessary, requisite or incidental to the purposes of such ranching business. To acquire the good will, plant, rights and property of any kind and to acquire and undertake the whole or any part of the assets and liabilities of any persons, firm, association or corporation having powers [171] similar to those of this Company, and to pay for the same in cash, stock or bonds of this corporation or otherwise. To amalgamate with other companies having powers similar to this company. To acquire

by purchase, subscription or otherwise and to hold, sell or otherwise dispose of shares, stocks, bonds or obligations of any company having objects similar in whole or in part to those of this Company, and to vote thereon as owners thereof. To conduct, carry on and operate a general manufacturing and mercantile business. To purchase, and acquire the stock-in-trade, real and personal property, effects and assets of any other person or persons or bodies corporate now or hereafter carrying on any manufacturing or mercantile business, with the good will of any such business, or to take security thereon, and to continue such business so acquired or to sell and dispose of the same or of the assets thereof. To purchase, lease and acquire, and to have and to hold and dispose of real and personal property of all kinds, including bonds and stocks of any incorporated company, and to take, acquire and have and hold security upon any real or personal property or effects whatsoever. To acquire and dispose of patent rights, trademarks and trade processes, secret or otherwise. To carry on a general farming and agricultural business in connection with other operations and works of the Company. To carry on cold storage business and a general fish business for all purposes of the Company, and to buy, sell, hire, operate and maintain boats, and other appliances for fishing and to buy, sell, cure, can, store and trade in fish and sea products of all kinds. To purchase, or otherwise acquire, buy, sell, hire, construct, charter, trade in, manage, own, operate and control vessels, tug boats, steamers, motor boats, gasoline boats, and

other craft and any interests and shares therein and generally to carry on the business of ship broker, ships' husband, ship agent, ship chandler and shipping merchant, and other like [172] business. To sell, mortgage, hypothecate, pledge or otherwise dispose of or encumber the undertakings of the Company, or any part thereof, and the real and personal property of the Company, or any part thereof, for such consideration and in such manner and upon such terms as to the Company may seem desirable or expedient. To do any and everything necessary, incidental, suitable, convenient or proper for the carrying on of the business of the said Company, or any part or branch thereof, or for the accomplishment of any of the purposes of the Company or for the attainment of any one or more of the objects of the Company as herein enumerated, or incidental thereto, or which shall appear conducive to or expedient or for the benefit of the Company, and for the carrying out of such purposes of objects incidental thereto or connected therewith. To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants or any other negotiable and transferable instruments in connection with the business of the Company, or any part thereof. To do all such other things as are or may be incidental or conducive to the attainment of the objects and purposes of the Company, and to do any and all such things as principals, agents, contractors, trustees or otherwise, and by or through trustees, agents or otherwise, either alone or in conjunction with others.

The purposes of said corporation are

The amount of capital stock is Three Hundred Thousand Dollars.

The amount of common stock is Three Hundred Thousand Dollars.

The amount of preferred stock is Nothing.

The amount of capital stock already paid in is Nothing.

The par value of the shares is One hundred dollars.

The names and residences of the owners of said shares are as follows: [173]

Names.	Residences.	No. of Shares.	
		Common.	Preferred.
Charles E. Gurney,	Portland, Maine.	One	
John J. Goody,	Portland, Maine.	One	
Eliza Barnard,	Portland, Maine.	One	

Three

Leaving unissued in the Treasury 2,997 shares.

Said Corporation is located at Portland, in the County of Cumberland.

The number of directors is three and their names are Charles E. Gurney, John J. Goody, Eliza Barnard.

The name of the clerk is Charles E. Gurney, and his residence is Portland, Maine.

The undersigned, Charles E. Gurney, is president; the undersigned John J. Goody is treasurer; and the undersigned Charles E. Gurney, John J. Goody and Eliza Barnard are the directors of said corporation.

Witness our hands this twenty-third day of May,
A. D. 1913.

CHARLES E. GURNEY,
President.

JOHN J. GOODY,
Treasurer.

CHARLES E. GURNEY,
JOHN J. GOODY,
ELIZA BARNARD,
Directors.

Cumberland,—ss. May 23, A. D. 1913.

Then personally appeared Charles E. Gurney,
John J. Goody and Eliza Barnard and severally made
oath to the foregoing certificate, that the same is
true.

Before me,

CARROL S. CHAPLIN,
Justice of the Peace.

STATE OF MAINE.

Attorney General's Office, May 23, A. D. 1913.

I hereby certify that I have examined the fore-
going certificate, and the same is properly drawn
and signed, and is conformable to the constitution
and laws of the State.

SCOTT WILSON,
Attorney General. [174]

COPY.

(Name of Corporation.)

THE FUNDY FOX COMPANY.

Cumberland,—ss.

Registry of Deeds.

Received May 23, 1913, at 2 h. 10 m. P. M.

Recorded in Vol. 48, page 34.

Attest: FRANK L. CLARK,
Register.

A true copy of record.

Attest: FRANK L. CLARK,
Register.

STATE OF MAINE.

Office of Secretary of State.

Augusta, May 26, 1913.

Received and filed this day.

Attest: J. E. ALEXANDER,
Secretary of State.

Recorded in Vol. 83, page 585.

Certificate of Secretary of State, to Copy of Record.

STATE OF MAINE.

Office of Secretary of State.

I hereby certify that the foregoing is a true copy from the records of this office.

IN TESTIMONY WHEREOF, I have caused the seal of the State to be hereunto affixed.

Given under my hand at Augusta, this fourteenth day of July in the year of our Lord one thousand nine hundred and fourteen and in the one hundred

and thirty-ninth year of the Independence of the United States of America.

[State Seal of Maine] J. E. ALEXANDER,
Secretary of State.

Filed in the District Court, Territory of Alaska,
Third Division. Aug. 17, 1914. Arthur Lang, Clerk.
By Chas. H. Hand, Deputy. [175]

**Plaintiff's Exhibit "H"—Statement of President
and Secretary of Fundy Fox Company.**

DOMINION OF CANADA,

PROVINCE OF NEW BRUNSWICK,

CITY AND COUNTY OF SAINT JOHN.

**STATEMENT OF THE PRESIDENT AND
SECRETARY OF THE FUNDY FOX COM-
PANY.**

1. The name of the Corporation *above-mention* is the Fundy Fox Company, and its principal Office or Place of business is the City of Portland, in the State of Maine. Its principal place of business within the Territory of Alaska is to be at Cordova in the Territory of Alaska.

2. The amount of capital stock is Three Hundred Thousand Dollars (\$300,000). Amount of the capital stock actually paid in in money is Sixteen Hundred Dollars (\$1,600.00), which is the total amount of stock paid in.

3. Its assets consist of a Motor Boat of the value of Sixteen Hundred Dollars (\$1600.00). It has no liabilities except the outstanding stock as above mentioned.

We, George Minchin Barker of the City of Saint John in the City and County of Saint John, and Province of New Brunswick, and H. Maud Simpson of the same place, President and Secretary, respectively, of the Fundy Fox Company, being sworn at the City of Saint John in the City and County of Saint John and Province of New Brunswick, make oath and say that the above-mentioned statements are true.

GEORGE MINCHIN BARKER,
President.

H. MAUD SIMPSON,
Secretary.

Sworn to at the city of Saint John in the city and county of Saint John and Province of New Brunswick this —— day of July, A. D. 1914.

Before me,

JOHN A. SINCLAIR,
Notary Public.

In faith and Testimony whereof, I, the said Notary Public have hereunto set my hand and affixed my Notarial Seal at the City of Saint John in the Province of New Brunswick, this —— day of July, A. D. 1914.

JOHN A. SINCLAIR,
Notary Public, Province of New Brunswick.

Filed in the District Court, Territory of Alaska, Third Division. August 17, 1914. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. [176]

**Plaintiff's Exhibit "I"—Appointment of Agent of
Fundy Fox Company.**

APPOINTMENT OF AGENT

of

**THE FUNDY FOX COMPANY, A FOREIGN
CORPORATION.**

The FUNDY FOX COMPANY, LTD., a corporation organized and existing under the laws of the State of Maine, hereby certifies and does hereby consent to be sued in the courts of the Territory of Alaska on any and all causes of action arising against it in said Territory, and it hereby further consents that such service of process may be made upon one C. D. Colwell, a resident of said Territory, and whose residence and place of business is at Cordova, Alaska, and any such service, when so made upon such agent, the said C. D. Colwell, shall be valid service upon this corporation.

G. M. BARKER,
President.

Attest: H. M. SIMPSON,
Secretary.

[Seal]
(FUNDY FOX CO.)

Filed in the District Court, Territory of Alaska,
Third Division. Aug. 17th, 1914. Arthur Lang,
Clerk. By Chas. A. Hand, Deputy.

CONSENT OF AGENT
For
THE FUNDY FOX COMPANY.

United States of America,
Territory of Alaska,
Division No. 3,—ss.

The undersigned, C. D. Colwell, residing at Cordova, Alaska, hereby consents to act as agent in the said Territory of Alaska, for the Fundy Fox Company, Ltd., a foreign corporation doing business in Alaska.

C. D. COLWELL.

Dated April 1st, 1914.

Filed in the District Court, Territory of Alaska, Third Division. Aug. 17th, 1914. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. [177]

**Defendant's Exhibit 1—Agreement May 8, 1913,
Reid to Whelpley.**

KNOW ALL MEN BY THESE PRESENTS:
That I, Lawrence Reid, of Little Konuski Fox Island, Alaska, U. S. A., the party of the first part, for and in consideration of the sum of \$4,000.00, Four Thousand Dollars, Gold Coin of the United States of America, to me in hand paid by F. E. Whelpley, St. John, New Brunswick, Canada, the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said party of the second part, F. E. Whelpley, his executors, administrators and assigns, all alive Blue *Goxes*, Buildings, Boats equipment used in the propagation of Blue Foxes on

Little Konuski Fox Island, Alaska.

To Have and to Hold the same to the said party of the second part, F. E. Whelpley, his executors, administrators and assigns forever, and I, Lawrence Reid, do for his heirs, executors and administrators, covenant and agree to and with the said party of the second part, F. E. Whelpley, his executors, administrators and assigns, to warrant and defend the sale of the said property, goods and chattels hereby unto the said party of the second part, F. E. Whelpley, his executors, administrators and assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof, I have hereunto set my hand and seal the eighth day of May in the year of our Lord one thousand nine hundred and thirteen.

LAWRENCE REID. (Seal)

Signed, sealed and delivered in presence of

JOHN GARDNER,

Mrs. JOHN GARDNER.

Filed for Record this 8th day of May, 1913, at 8 A. M. F. C. Driffield, U. S. Commissioner, Ex-officio Recorder, Unga, Alaska.

I hereby certify that the foregoing is a true copy of the record as it appears on page 227 of Book I, Miscellaneous Records of the Unga-Peninsula Recording District.

[Commissioner's Seal] F. C. DRIFFIELD,
U. S. Commissioner, Ex-Officio Recorder Unga,
Alaska. [178]

**Defendant's Exhibit 2—Agreement, January 16,
1914, Between Whelpley and Williams.**

THIS INDENTURE made this Sixteenth day of January in the year of our Lord one thousand nine hundred and fourteen.

BETWEEN Frank E. Whelpley of the City of Saint John in the Province of New Brunswick, Agent, of the first part, and G. Minchin Barker of the same place, Merchant, and Frank E. Williams of the same place, Merchant, of the second part.

WHEREAS, the said parties hereto of the first and second part have been doing business as partners under the firm name of the Fundy Fox Company.

AND WHEREAS, the said party hereto of the first part desires to retire from said partnership and to transfer his rights and interests in said partnership unto the parties hereto of the second part.

NOW, THEREFORE THIS INDENTURE WITNESSETH that the said Frank E. Whelpley in consideration of the sum of *Six* Thousand dollars of lawful money of the Dominion of Canada to him in hand well and truly paid by the said parties hereto of the second part, and also in consideration of a certain promissory note bearing even date herewith made by the said parties hereto of the second part, for the sum of *Six* Thousand Dollars, payable to the said party hereto of the first part, *three* months after the date thereof together with interest thereon at and after the rate of six per centum per annum, hereby grants, bargains, sells,

assigns, transfers, and sets over unto the said parties hereto of the second part their executors, administrators, and assigns all his right, title and interest in all the goods, chattels, assets, bills receivable, and properly belonging to the said partnership, To Have and To Hold the same unto and to the use of the said parties hereto of the second part, their executors, administrators and assigns forever.

And the said party hereto of the first part hereby undertakes and agrees to and with the said parties hereto of the second part that he will not solicit or induce the employees of the parties hereto of the second part in Alaska to leave the employment of the said parties hereto of the second part.

And the said G. Minchin Barker and Frank E. Williams for themselves and each of themselves their and each of their heirs, [179] executors and administrators hereby covenant, promise, and agree to and with the said Frank E. Whelpley, his executors and administrators that they the said G. Minchin Barker and Frank E. Williams and each of them their and each of their heirs, executors and administrators shall and will save harmless and keep indemnified the said Frank E. Whelpley, his executors and administrators of and from the payment of all the debts, promissory notes, Bills of Exchange and liabilities of every nature, description and kind of the said partnership and which the said parties hereto of the first and second parts as such partners as aforesaid may now owe or be responsible for, or which the said parties hereto of the first and second part as such partners as aforesaid may hereafter owe

or becoming responsible for or liable to pay and of and from all debts, demands, sums of money, damages, suits, or other liabilities of the said partnership which the said parties hereto of the first and second part may hereafter in any way become liable for or have to pay by reason of the said partnership.

In Witness Whereof the said parties hereto have hereunto set their hands and seals this sixteenth day of January in the year of our Lord one thousand nine hundred and fourteen.

FRANK E. WHELPLEY, (Seal)

Signed, sealed, and delivered in the presence of

EDWARD P. RAYMOND,

F. E. WILLIAMS, (Seal)

G. M. BARKER. (Seal) [180]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Opinion.

Prior to 1898 Little Koniuji, near Unga, Alaska, had been leased by the Secretary of the Treasury of the United States for the sum of \$100, per annum for the purpose of raising foxes. After 1900 it seems the government no longer required the payment of any rental. Said island continued to be oc-

cupied by various persons for the raising of foxes until in 1913 one Lawrence Reed made a bill of sale to the defendant in this action F. E. Whelpley of "all live blue foxes, buildings, boats and equipment used in the propagation of blue foxes on Little Koniuji Fox Island, Alaska" for the consideration of \$4,000. The defendant testified that this purchase was made not for himself but for the Provincial Fox Company, who furnished the money.

On the 30th day of July, 1914, the United States of America, by Edward F. Sweet, Assistant Secretary of Commerce (in accordance with and by virtue of the authority conferred by Executive Orders of February 2d, 1904 and March 25, 1910), leased to the plaintiff, A. Grosvold, the said Little Koniuji Island for the term of five years commencing on the first day of July, 1914, for an annual rental of \$205, for the purpose of raising and propagating fur-bearing animals thereon.

The defendant testified that he notified his principal of the call for bids on the part of the government for the leasing of said island and his principal notified him that they put in a bid therefor.

There were some foxes on the said island on the first day of July, 1914, belonging either to the defendant or his principal [181] which the defendant claimed the right to remove. Defendant also denies the validity of the lease from the United States to the plaintiff, contending that there is no authority of law for making said lease.

Executive order of February 2, 1904, is as follows:

IT IS HEREBY ORDERED, That the authority of the Secretary of the Treasury to lease certain islands in Alaska for the propagation of foxes, and all duties and powers pertaining thereto, shall be transferred to and vested in the Secretary of Commerce and Labor.

Executive order of March 25, 1910, is as follows :

IT IS HEREBY ORDERED, That the authority transferred to and vested in the Secretary of Commerce and Labor by the Executive order of the President dated February 2nd, 1904, to lease certain islands in Alaska for the propagation of foxes, and all duties and powers pertaining thereto, shall be extended to include the authority to lease the islands for the propagation of other fur-bearing animals in addition to foxes; this order to take effect March 25th, 1910.

The Authority of the Secretary of Commerce to lease certain islands in Alaska for the propagation of foxes has been sustained and upheld by the Attorney-General in an opinion given to the Secretary of Commerce and Labor of date June 24, 1905, and is found in Volume 25 of Opinions of Attorneys-General at page 497. In said opinion the Attorney-General among other things says:

“It appears that, beginning in 1882, and since that time the Secretary of the Treasury assumed and exercised authority to lease various other islands in the waters of Alaska for the propagation of foxes. Such action seems to have been originally without statutory sanction, but in the act of May 14, 1898 (30 Stat. 409, 413), extend-

ing the homestead laws to Alaska, Congress incorporation the following provision :

‘Provided, That the Annette, Pribilof Islands, *and the islands leased or occupied* for the propagation of foxes be excepted from the operation of this act.’

It is not suggested that the authority of the Secretary of the Treasury in the premises was ever questioned, and such an uninterrupted and long continued practice, supported by the above-quoted statutory evidence of legislative acquiescence seems to clearly establish the authority of the Secretary of the Treasury to continue to lease for this purpose such islands in Alaska as had been so leased by him prior to the act of May 14, 1898.

February 2, 1904, The President issued an Executive order in the following language :

‘Upon the recommendation of the Secretary of the Treasury and the Secretary of Commerce and Labor, it is hereby ordered that the authority of the Secretary of the Treasury to lease certain islands in Alaska for the propagation of foxes, and all duties and powers pertaining thereto, shall be transferred to and vested in the Secretary of Commerce and Labor.’ [182]

The authority of the President to make this order, especially in the absence of any inconsistent statutory provision, seems to be beyond question. (7 Opin. 453, 462, 469; 9 Opin. 462; 25 Opin. 11; Lockington v. Smith, Pet. C. C. 466.)

You are therefore advised that in my opinion you are now authorized to lease, for the propagation of foxes, such islands in the waters of Alaska as had been so leased by the Secretary of the Treasury prior to May 14, 1898."

The defendant argues that the Attorney-General is mistaken and that the government of the United States has no authority to lease these islands, including the said Little Koniuji Island.

In an opinion given by the Solicitor of the Department of Commerce to the Secretary of Commerce October 23, 1913 "In Re authority of the Secretary of Commerce to lease Little Naked Island for purposes of fox propagation" the solicitor says:

"The term 'reservation,' as used in relation to the public lands, means a withdrawal of the specified portion of the public domain from the administration of the Land Office, and from disposal under the land laws, and the appropriation thereof, for the time being, for some particular use or purpose of the general government. (32 Cyc. 858.)

In *United States v. Payne* (8 Fed. 888) Mr. Justice Parker says:

'A reservation may be made, either by treaty, executive order, or by act of Congress, and all of these methods are expressly recognized by the homestead and pre-emption laws. *No set form of words or phrases is necessary to set aside a reservation.* The Sovereign is not parting with the title, *but only setting it apart to be used for a specific purpose.* It is enough if there are

sufficient words to indicate the purpose of the power that can act to show that in the given case it intended to act.'

And in *Wilcox v. McConnell* (13 Pet. 496, 512) an appropriation is defined "*as nothing more nor less than setting apart the thing for some particular purpose.*"

The act of May 14, 1898, entitled, "An Act Extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes" (30 Stat. 409) contains the following proviso:

'Provided, That the Annette, Pribil-
 of Islands, and the islands leased or oc-
 (Certain islands reserved) cupied for the propagation of foxes be
 excepted from the operation of this act.'

As Little Naked Island, at the time of the passage of this Act, was under lease by the Secretary of the Treasury for the purpose of propagating foxes, it was clearly included in this proviso and excepted from entry and sale, and thereby severed from the mass of public lands for the manifest purpose that it might be continued to be leased as theretofore. No distinction can be made between it and the other islands included in the proviso and theretofore leased for the purpose of fox propagation. Although it may be true that prior to 1898 the Secretary of the Treasury, who had assumed authority to lease islands for the propagation of foxes, had no statutory authority to do so; nevertheless, there is no question that subsequently to that

time, he had statutory authority to make such leases, as the above proviso, by excepting such islands from entry and sale withdrew them from the public domain and set them apart for that purpose.” [183]

Furthermore it does not appear that the defendant is in position to question this right or authority; whatever rights he or his principal may have had were those of a trespasser only, and he or his principal were fully advised on the intention to lease the island and submitted a bid therefor.

As to the question of the just and practical working of such a system of leasing, that is not a matter for the court to determine. The government has the right, through its various departments, to adopt such system in the matter of sale or leasing of its public lands as it deems best. There is little doubt but what in all fairness one who has in good faith, whether by lease or mere occupation, raised foxes upon one of these islands, should be given a reasonable time to remove them after the government has leased to some one else.

There is considerable dispute in the testimony as to what followed after plaintiff Grosvold secured his lease July 1, 1914. Probably it is true that had both plaintiff and defendant acted with more forbearance and consideration toward each other, they would each have been saved considerable delay, annoyance and expense.

The evidence of the defendant is not very satisfactory as to the ownership of the foxes on the island at the time Grosvold acquired his lease. It appears

that the defendant was representing two companies, the Fundy Fox Company and the Provincial Fox Company. It is claimed by defendant's counsel that it is immaterial what defendant's relations were with these two companies, but it is a matter that does seem to have a bearing on the case as affecting the credibility of the defendant himself.

On January 19, 1914, the said Fundy Fox Company wrote the following letter to the plaintiff:

"This is to inform you that Mr. F. E. Whelpley, who was formerly in our employ, is no longer connected with us in any of our enterprises.

We will have a new manager shortly in the west and will notify you as to who this new manager will be in a few days.

We hope our new manager will be more successful in getting along with your good self than Mr. Whelpley was. We wish to have the goodwill of all the dealers and men of Unga and elsewhere and hope we will do some business in the future to our mutual advantage."

And on January 21, 1914, another letter as follows:
[184]

"This is to notify you that Mr. Chesley D. Colwell has been appointed our representative in charge of our Alaskan business and we hope to have your assistance and goodwill in any business he may undertake between the Fundy Fox Co. Ltd. and your good self."

The defendant testified that Colwell, who it appears from the last-named letter, was appointed as

agent for the Fundy Fox Co., was by *him* authorized to trap foxes on the Little Koniuji Island after Grosvold had acquired his lease, and that Colwell trapped some 74 foxes. But it does not satisfactorily appear just whom Colwell was working for or who got the foxes. Whelpley testifies that he believes there were 100 pairs of foxes on this island July 1, 1914, when Grosvold acquired his lease. Plaintiff Grosvold testified that he entered into an arrangement or agreement with Colwell whereby Colwell was to have until September 1, 1914, within which to trap and remove the foxes. During this time Colwell took 74 foxes. In addition to this Whelpley testified that he or the men employed by him trapped 26 foxes in the fall of 1914, after Colwell left, to wit, after September 1, 1914; that during the year 1915 he got 14 and during the year 1916, sixteen additional foxes, making 56 in all. Whelpley further testified that in his opinion there are 130 pairs of foxes on the island now. He claims he has a right to remove the foxes which were on there on July 1, 1914, and while he had nearly two years in which to remove them, he says he cannot remove them in two years. According to his version there are more foxes on the island now than there ever were, by reason of the natural increase, and in spite of the fact that 65 pairs or 130 have been removed since July 1, 1914.

There is no doubt but what in all fairness Whelpley or whoever owned these foxes prior to Grosvold's lease, was entitled to a reasonable time in which to remove the foxes. This Grosvold seems to have been willing to allow and in all probability the defendant,

or whoever the foxes belonged to has trapped and removed all they were entitled to. To say that defendant can go on indefinitely and trap foxes on this island would be to annul the lease and deprive the plaintiff of all rights thereunder.

Plaintiff testifies that he himself places sixteen foxes on this island in October, 1915. [185]

I have carefully considered he claim of the plaintiff for damages against defendant, but I believe a fair and equitable adjudgment of the whole controversy will best be had by allowing the injunction prayed for, without damages, but with costs to plaintiff.

Findings and decree may be accordingly prepared.
Valdez, Alaska, August 2, 1916.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Aug. 2, 1916. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. Entered Court Journal No. 10, Page No. 239. [186]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Findings of Fact and Conclusions of Law Proposed
by the Defendant.**

Comes now the above-named defendant and submits the following findings of fact and conclusions of law to the above-named court to be made and entered by the Court as its findings of fact and conclusions of law and its decision herein, as follows, to wit:

The above-entitled cause coming on regularly for trial upon its merits on the 8th day of July, 1916, at Valdez, Alaska, before the Court, the plaintiff being present in court and being represented by his counsel, Messrs. James and Wooley, and the defendant being present in court and being represented by his counsel, J. Lindley Green, Esq., and Messrs. Donohoe & Dimond, and both sides having severally announced themselves ready for trial, and the plaintiff having introduced all his evidence and rested, and the defendant having introduced all his evidence and rested, and the Court having heard the arguments of the respective counsel for the plaintiff and the defendant, and having taken said cause under advisement, and the said counsel for plaintiff and defendant having submitted their respective briefs to the court which have been read and duly considered, and the Court being fully advised in the premises, now makes and enters the following:—

FINDINGS OF FACT.**I.**

That in the year 1904 one Lawrence Reid went into the possession of Little Koniuji Island, one of the

Shumagin Group, for the purpose of using said Island for the propagation of foxes, and he retained exclusive and undisputed possession of all of said Island [187] and of the foxes thereon, and used said Island for the purpose of propagating foxes until the 8th day of May, 1913. That on the 8th day of May, 1913, the said Reid sold all of his right, title and interest in and to the foxes upon said Island, and the buildings, boats and equipment used in connection with the raising and propagating of foxes on said Island to the defendant in this action for the sum of \$4,000.00. That thereupon the said Lawrence Reid made and executed to the said defendant a bill of sale for all of said property, which was thereafter and on said last-named date recorded in the office of the Recorder of the Unga-Peninsula Precinct, at Unga, Alaska, that being the recording precinct in which the Island is situated. That on the said 8th day of May, 1913, the defendant went into possession of said Island and of all the foxes thereon, and of all the boats, buildings and equipment thereon, and ever since said date has continuously remained in such possession, either in person or by his agents, and is now in such possession.

II.

That ever since the said 8th day of May, 1913, the defendant has been and now is the owner and holder of the legal title to all of the foxes on said Island and the buildings, boats and equipment thereon and connected with the raising and propagation of foxes on said Island, but the equitable owner of said property during all of said time has been the Provincial

Fox Company, a corporation organized and existing under the laws of New Brunswick, Canada. That the defendant has held the legal title in and to all of said property for said Provincial Fox Company, to be transferred to said Company upon the payment to him of sums due him from said Company, now amounting to \$8,500, and that said defendant holds title to all of said property as trustee for said Company. That said sum of \$8,500 is due to the defendant from the said Provincial Fox Company for and on account of moneys expended by defendant, for said Company, for the care, maintenance and protection of said property and the propagation of foxes on said Island. That defendant has never conveyed the legal title to said foxes, their increase, and buildings and other equipment to anyone, and is now the holder thereof and is entitled [188] to the immediate possession of the same, as trustee for the Provincial Fox Company.

III.

That on the 30th day of July, 1914, one Edwin F. Sweet, acting as assistant Secretary of Commerce for the United States, executed an instrument purporting to be a lease of said Island to the plaintiff in this action for a period of five years beginning with July 1, 1914, and expiring on June 30, 1919, for a yearly rental of \$205. That in executing such lease the said assistant Secretary of Commerce acted without authority of law, and such lease was void and of no effect whatsoever as against the defendant herein in his right to the possession of said Island and to the foxes and other property thereon. That such

attempted lease did not purport to lease to plaintiff any of the foxes and other personal property of defendant upon said Island, and did not give, or purport to give to the plaintiff any rights whatsoever to any such foxes or other property, but the same remained the property of and in the possession of the defendant herein, as trustee for the said Provincial Fox Company.

IV.

That at the time such lease was attempted to be given to the plaintiff by the Department of Commerce, and at the time the same went into effect by its terms, the defendant as trustee for the Provincial Fox Company, was the owner of 100 pairs of blue foxes on the Island of the value of \$15,000, and was also the owner of the buildings and other equipment thereon in the value of \$1,500. That plaintiff, at the time of the execution of such lease, and at the time of his submitting a bid therefor, was aware of defendant's rights to the possession of said Island, and to the foxes and other property thereon, and knew that the defendant could not trap and remove his said foxes prior to the time the said lease went into effect, and in bidding for and obtaining such lease did so with the purpose of obtaining possession of a considerable share and the greater portion of the defendant's foxes on said Island and his buildings and other equipment thereon, and thereby depriving said defendant and his *cestui que* trust of said foxes and other property without any compensation. That at the time said lease went into effect the defendant would have required two full years in order

to remove his foxes from said Island [189] and such period would have been only a reasonable time for such removal, in case the same were required to be made.

V.

That at the time the said Secretary of Commerce proposed to lease the Island in the fall of the year 1913, the defendant, not desiring to be disturbed in his possession of said Island and of the foxes and other property thereon, submitted to the Department of Commerce a bid for the use of said Island for the five year period hereinbefore named, for a yearly rental of \$200; that plaintiff entered a bid of \$205 per year for the same time, and the lease was awarded to the latter. That defendant, since said lease has gone into effect, through himself and his agents has removed from said Island 63 pairs of foxes. That he has been unable to remove the remainder of his foxes by reason of the interference of the plaintiff who went upon said Island on or about August 10, 1914, and prevented the employees of defendant from trapping foxes for a considerable period of time, and interfered in other ways, and in the month of December, 1915, caused defendant's arrest and his consequent absence from the Island until the latter part of February, 1916. That as a result of all such interference the defendant has been able to trap from said Island out of his 100 pairs of foxes thereon at the time of the execution of the lease to plaintiff but 63 pairs, and that without counting the natural increase the defendant now has upon said Island 37 pairs of foxes, and with the natural

increase he has 130 pairs. This does not include the foxes placed upon the Island by the plaintiff in the month of November, 1915. That defendant either in person or through his employees and agents never made any agreement with the plaintiff that he would vacate and abandon said Island on the 1st day of September, 1914, or at any other date, and has never voluntarily relinquished his rights in and to said Island; nor has the Provincial Fox Company ever relinquished any of its rights in and to said Island and the foxes and other property thereon. That defendant, as trustee for the Provincial Fox Company, now has upon said Island 65 pairs of foxes of the value of \$10,000, and buildings and other equipment of the value of \$1,000. [190]

VI.

That said Island has been used solely for the propagation of foxes since the year 1895 and was never under lease from the United States to the persons in possession thereof and using the same for the propagation of foxes.

And from the foregoing findings of fact the Court makes and enters the following,—

CONCLUSIONS OF LAW.

I.

That the plaintiff's alleged lease, as set out in his complaint, is null and void and of no force or effect as against the defendant, and the plaintiff has acquired no rights to the possession of said Island, or to the foxes and other property thereon by reason of said lease.

II.

That the defendant is entitled to the use and occupation of said Island for the purpose of propagating foxes thereon.

III.

That the defendant is the owner of all of the foxes now upon said Island, with the exception of 15 foxes placed thereon by plaintiff in the fall of 1915, and the buildings and other equipment thereon and used in connection with the propagation of foxes thereon, as trustee for the Provincial Fox Company.

IV.

That the defendant is entitled to a judgment herein in his favor and against the plaintiff, dismissing the plaintiff's action with prejudice, and the defendant to recover from the plaintiff his costs and disbursements incurred herein.

Respectfully submitted,

J. LINDLEY GREEN and

DONOHOE & DIMOND,

Attorneys for the Defendant [191]

**Order of Court Refusing to Sign Defendant's
Findings of Fact and Conclusions of Law.**

The above Findings of Fact and Conclusions of law are refused and to the refusal to make and sign the same the defendant excepts and exception is allowed.

Dated this 12th day of August, 1916.

FRED M. BROWN,

District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Aug. 12, 1916. Ar-

thur Lang, Clerk. By T. P. Geraghty, Deputy.
[192]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Findings of Fact and Conclusions of Law.

The above-entitled action coming on regularly to be heard, at Valdez, Alaska, the 8th day of July, 1916, and having been tried upon the merits before the Court, defendant being represented by his attorneys J. Lindley Green, Esq., and Donohoe & Dimond, and the plaintiff being represented by his attorneys James & Woolley, and Andrew Grosvold and Otto Elfstrom having been sworn and examined as witnesses for the plaintiff, and the depositions of F. E. Williams, A. S. Catlin, Hjalmar Christiansen, Charles Christiansen and S. O. Casler, having been read in evidence on behalf of the plaintiff, and F. E. Whelpley and J. L. Green, having been sworn and examined as witnesses for the defendant, and the depositions of John Gardner, and Harry Richards, George Cushing and Conrad Syvertsen having been read in evidence on behalf of defendant, and documentary evidence having been introduced, and the

court being fully advised in the premises, finds the facts as follows:

1. That Little Koniuji Island of the Shumagin Group, Territory of Alaska, is the property of the Government of the United States of America.

2. That the Government of the United States of America, thru the Department of Commerce, did lease said Little Koniuji Island to the above-named plaintiff Andrew Grosvold for a period of five years, said lease becoming effective in favor of said plaintiff on the 1st day of July, 1914.

3. That the said lease is a valid and binding instrument and that the Department of Commerce was legally authorized to make said lease. [193]

4. That while the said plaintiff, by virtue of said lease was and is entitled to the undisturbed and exclusive possession of said island, defendant entered wrongfully thereon and committed divers trespasses without right, title or license from the plaintiff, and disturbed plaintiff's estate in the said islands, rendering it of no use or value to said plaintiff, and said defendant still threatens to continue said trespasses.

5. That said defendant F. E. Whelpley has removed from said island all the property to which he or his principals are or were legally entitled.

CONCLUSIONS OF LAW.

As conclusions of law from the foregoing facts the court finds:

That a permanent injunction should issue restraining defendant F. E. Whelpley, his agents, servants, employees, and all others acting in his aid or assist-

ance, from trespassing on said Little Koniuji Island, or in anywise disturbing the possession of said plaintiff in said island.

That plaintiff is entitled to his costs and disbursements.

Let a decree be entered accordingly.

Dated 12 day of Aug., 1916.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Aug. 13, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 10, page No. 263.

[194]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Exceptions to the Findings of Fact and Conclusions
of Law Entered by the Court.**

Comes now the above-named defendant by his attorneys of record, and makes in open court and files this, his exceptions to the findings of fact and conclusions of law made and entered by the Court in the above-entitled action as its decision in this action,

said exceptions being made and filed after the Court made its said findings of fact and conclusions of law herein, and before the entry of judgment herein.

I.

Defendant excepts to the second finding of fact made and entered by the Court for the reason that the same is contrary to the law, the Department of Commerce of the United States being without any jurisdiction over said Little Koniuji Island and without authority to make or execute any lease of said island.

II.

Defendant excepts to the third finding of fact made and entered by the Court for the reason that the same is contrary to the law.

III.

Defendant excepts to the fourth finding of fact made and entered by the Court for the reason that the same is contrary to the law and not supported by the evidence, the evidence clearly showing that the defendant at all times when upon said island either in person or by his agents after the 1st day of July, 1914, was upon said island for the purpose of catching his foxes thereon and removing them therefrom, and for the purpose of caring for said foxes. [195]

IV.

Defendant excepts to the fifth finding of fact made and entered by the Court on the ground that the same is contrary to the law and not supported by the evidence. The evidence clearly shows that the de-

fendant had on said island on the 1st day of July, 1914, one hundred pairs of blue foxes, and that he and his agents have removed therefrom since said time sixty-three pairs and that defendant was prevented from removing the remainder of his foxes on account of the unwarranted interference by the plaintiff. The evidence further shows that there are now upon said island one hundred thirty pairs of blue foxes the property of the defendant as trustee for the Provincial Fox Company, not including the fifteen foxes placed on said island by the plaintiff.

V.

Defendant excepts to the first conclusion of law made and entered by the Court for the reason that the same is not supported by the evidence offered at the trial of the case, and is a wrong and erroneous conclusion of law when considered in the light of such evidence.

VI.

Defendant excepts to the second conclusion of law made and entered by the Court for the reason that the same is a wrong and erroneous conclusion of law when viewed in the light of the evidence offered at the trial of this cause, and is not supported by such evidence.

J. LINDLEY GREEN and
DONOHUE & DIMOND,

Attorneys for the Defendant.

The foregoing exceptions are hereby allowed this 15th day of August, 1916, as of date August 12, 1916.

FRED M. BROWN,

Judge.

Filed in the District Court, Territory of Alaska,
Third Division, Aug. 15, 1916. Arthur Lang, Clerk.
By T. P. Geraghty, Deputy. [196]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Judgment.

The above-entitled action coming on regularly for hearing on the 8th day of July, 1916, J. Lindley Green and Donohoe & Dimond appearing for defendant, and James and Woolley appearing for plaintiff, and evidence having been introduced by each of the respective parties, and said cause having been submitted for decision, and the Court, being fully advised, having rendered its findings of fact and conclusions of law herein, wherein a permanent injunction as prayed for in plaintiff's complaint is allowed:

Now, therefore, by reason of the law and the findings aforesaid:

IT IS ORDERED, ADJUDGED AND DECREED, that defendant F. E. Whelpley, his servants, agents, employees, and all others acting in his aid or assistance, be and they are hereby forever

enjoined and restrained from trespassing upon said Little Koniuji Island, Shumagin Group, Territory of Alaska, or in anywise disturbing the possession of the plaintiff in said island; that defendant have judgment for his costs herein amounting to the sum of _____.

Dated this 12 day of Aug., 1916.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Aug. 12, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 10, page No. 264.
[197]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,
Plaintiff,

vs.

F. E. WHELPLEY,
Defendant.

**Order Extending Time to November 30, 1916, to
Compare, etc., Bill of Exceptions.**

This matter having come on regularly for hearing on this 6th day of September, 1916, and at the same term of court in which trial of said cause was had and judgment therein rendered, upon the motion of defendant for an order granting him the time

until and including November 30, 1916, within which to prepare, settle, and have signed and file his bill of exceptions on appeal, and the Court being fully advised in the premises,—

IT IS ORDERED, That the said defendant is hereby granted the time until and including the 30th day of November, 1916, within which to prepare, settle, have signed and file herein his bill of exceptions on the appeal of this cause to the Circuit Court of Appeals for the Ninth Circuit.

Done at Valdez, Alaska, September 6, 1916.

By the Court.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Sept. 6, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal, No. 10, page No. 276.

[198]

*In the District Court for the Territory of Alaska,
Third Judicial Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Stipulation Extending Time to January 31, 1917, to
Compare, etc., Bill of Exceptions.**

It is hereby stipulated by and between the plaintiff in the above-entitled cause, Andrew Grosvold, by his attorneys James and Woolley and the defendant F. E. Whelpley, by his attorneys Donohoe and Dimond and J. Lindley Green, that the time which defendant has to prepare and have signed by the Court, his bill of exceptions in the above-entitled cause, shall be and hereby is extended until and including the thirty-first (31st) day of January, 1917.

Dated Nov. 24th, 1916.

JAMES & WOOLLEY,

Attorneys for Plaintiff.

DONOHOE & DIMOND and

J. LINDLEY GREEN,

Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Nov. 28, 1916.
Arthur Lang, Clerk. By T. P. Geraghty, Deputy.
[199]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Order Extending Time to January 31, 1917, to
Compare, etc., Bill of Exceptions.**

In accordance with the stipulation of the plaintiff and defendant, by and through the respective counsel for the parties, James & Wooley for the plaintiff, and J. Lindley Green and Donohoe & Dimond, for the defendant, duly signed and filed herein,—

IT IS ORDERED, That the said defendant is hereby granted the time until and including the 31st day of January, 1916, within which to prepare, settle, have signed and file herein his bill of exceptions on the appeal of this cause to the Circuit Court of Appeals for the Ninth Circuit.

Done this 28th day of November, 1916.

By the Court:

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Nov. 28, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal, No. 11, page No. 25.

[200]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Order Extending Time to February 20, 1917, to
Prepare, etc., Bill of Exceptions.**

Now on this day upon good cause being shown,
IT IS ORDERED that the time within which defendant may prepare, serve and file his bill of exceptions in this cause be extended to February 20th, 1917.

Dated Juneau, Alaska, January 26, 1917.

CHARLES E. BUNNELL,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Jan. 26, 1917. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 11, page No. 112.

(The following telegram attached to above order):

“SIGNAL CORPS, UNITED STATES ARMY,
Telegram.

RECEIVED AT

39 SI X 82 OB.

Juneau, Alaska, Jan. 26, 1917.

Lang

Clerk Court Valdez.

You may enter following order which is mailed

you today in the District Court for the Territory of Alaska, Third Division. Andrew Grosvold, Plaintiff, vs. F. E. Whelpley, Defendant, Number 804. Order upon good cause shown it is order that the time within which defendant may prepare, serve and file his bill of exceptions be extended to February twenty, nineteen seventeen. Dated Juneau, Alaska, January 26, 1917.

CHARLES E. BUNNELL,
District Judge.

135PM.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Jan. 26, 1917. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.
[201]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Order Extending Time to February 20, 1917, to
File Bill of Exceptions.**

Upon good cause shown it is ordered that the time within which defendant may prepare, serve and file his bill of exceptions be extended to Feb. twenty, nineteen seventeen.

Dated, Juneau, Alaska, January 26, 1917.

CHARLES E. BUNNELL,

District Judge.

Filed in the District Court, Territory of Alaska,
Third Division, Feb. 3d, 1917. Arthur Lang, Clerk.
By T. P. Geraghty, Deputy. [202]

SEPTEMBER 1916 TERM—FEBRUARY 19,
1917,—91ST COURT DAY MONDAY.

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Minutes of Court—February 19, 1917—Order Ex-
tending Time to Prepare, etc., Bill of Excep-
tions.**

Now on this day, on motion of Donohoe & Dimond,
attorneys for defendant, IT IS ORDERED that the
defendant have further extension of ten days time,
in which to settle and file his bill of exceptions in this
cause.

FRED M. BROWN,

Judge.

Entered Court Journal No. 11, page No. 139.

[203]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Order Extending Time to and Including March 31,
1917, to Prepare, etc., Bill of Exceptions.**

Now, on this day, for good cause shown, and the Court being fully advised in the premises;

IT IS ORDERED: That the time within which the above-named defendant may prepare, settle and file his bill of exceptions in the above-entitled cause preparatory to taking a writ of error therein to the Circuit Court of Appeals for the Ninth Circuit be and the same hereby is enlarged and extended until and including the 31st day of March, 1917.

Done at Valdez, Alaska, this 28th day of February, 1917.

By the Court.

FRED M. BROWN,

Judge.

Filed in the District Court, Territory of Alaska, Third Division. Feb. 28th, 1917. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 11, page No. 155.

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Order Extending Time to and Including April 10,
1917, to Prepare, etc., Bill of Exceptions.**

Now, on this day, on motion of the defendant, and
for good cause shown,

IT IS ORDERED; That the said defendant have
until and including the 10th day of April, 1917, within
which to prepare, settle and file his bill of exceptions
on appeal of the above-entitled cause.

Done at Valdez, Alaska, this 23d day of March,
1917.

By the Court:

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory
of Alaska, Third Division. Mar. 23, 1917. Arthur
Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 11, page 219. [205]

APRIL, 1917 TERM—CORDOVA, ALASKA,
APRIL 9TH—7TH COURT DAY MONDAY.

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Minutes of Court—April 9, 1917—Order Extending
Time 15 Days to and Including April 10, 1917,
to Prepare, etc., Bill of Exceptions.**

Now, on this day, on motion of Donohoe & Dimond,
attorneys for defendant,

IT IS ORDERED that the defendant have a fur-
ther extension of fifteen days' time from and after
April 10th, 1917, in which to file, prepare and settle
his bill of exceptions in this cause.

Entered Court Journal No. C-2, page No. 311.

[206]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Order Settling and Certifying Bill of Exceptions.

This matter having come on for hearing on this 14th day of April, 1917, upon the petition of the defendant for an order settling and certifying his bill of exceptions upon the appeal of the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, and the defendant having presented and filed in court his said bill of exceptions consisting of the papers, pleadings, proceedings and exceptions hereinafter named, and such bill of exceptions having been duly served upon the plaintiff, and the plaintiff offering no objections to the signing and settling of such bill of exceptions, and the court having examined such bill of exceptions and found the same to consist of and include all of the papers, proceedings, pleadings and exceptions necessary to a determination of the points involved and raised by the defendant's several objections and exceptions; and the court being fully advised in the premises,—

IT IS ORDERED: That the foregoing bill of exceptions propsoed by the defendant, consisting of the plaintiff's complaint, defendant's demurrer to the complaint, order of court overruling such demurrer, defendant's answer, plaintiff's reply, court reporter's transcript of the testimony given upon the trial of the cause, including the depositions of A. S. Catlin, Charles Christiansen, S. O. Casler, Hjalmer Christiansen, John Gardner, Harry Richards, George Cushing, F. E. Williams, and Conrad Syvertsen, and including [207] Plaintiff's Exhibits "A," "B," "C," "D," "E," "F," "G," "H" and "I," defend-

ants "Exhibits 1 and 2," the opinion of the Court, the findings of fact and conclusions of law proposed by the defendant to the court for signing and entry, the order of the Court refusing to make and enter such findings of fact and conclusions of law proposed by the defendant, and allowing an exception, the findings of fact and conclusions of law made and entered by the Court, the defendants exceptions to such findings of fact and conclusions of law made and entered by the Court, the decree, the order of the Court granting the defendant until November 30, 1916, to prepare, settle and file his bill of exceptions on appeal, stipulation of the plaintiff and defendant that defendant should have until January 31, 1917, to prepare, settle and file his bill of exceptions on appeal, the order of the Court on such stipulation, the order of Judge Bunnell, of January 26, 1917, granting defendant until February 20, 1917, to prepare, settle and file his bill of exceptions on appeal, minute order of the court of February 19, 1917, enlarging time in which defendant could prepare, settle and file his bill of exceptions for a period of ten days from and after said last-named date, the order of the court of February 28, 1917, enlarging time for preparation, settlement and filing of bill of exceptions until March 31, 1917, the order of the Court of March 23, 1917, enlarging time for the preparation, settlement and filing of bill of exceptions until April 10, 1917, the order of the court of April 9, 1917, enlarging the time for the preparation, settlement and filing of bill of exceptions for a period of fifteen days from and after said last-named date, be, and the same hereby is,

allowed, approved and settled, and that the same shall be and constitute the defendant's bill of exceptions upon the appeal of the above-entitled cause.

IT IS FURTHER ORDERED; That this order shall be deemed and taken to be a certificate of the undersigned judge of this court that such bill of exceptions consists of all of the papers, pleadings [208] and proceedings had and done in said cause, including a transcript of all of the evidence offered in and upon the trial thereof, and all and singular the exceptions of the defendant therein, proper or necessary to a determination of the questions involved therein, or raised or attempted to be raised upon the appeal of said cause. And it is upon order of this court, and for a clear understanding of the questions involved that a full and complete transcript of the testimony offered and given in said cause has been made and included in such bill of exceptions.

DONE IN OPEN COURT, at Cordova, Alaska, in the District Court for the Territory of Alaska, Third Division, and signed by the judge of said court before whom trial of said cause was had.

Dated April 14, 1917.

FRED M. BROWN,
Judge of the District Court for the Territory of
Alaska, Third Division.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 14, 1917. Arthur Lang, Clerk.

Entered Court Journal No. C-2, page No. 337.
[209]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Petition for Appeal.

To the Honorable FRED M. BROWN, Judge of the
District Court for the Territory of Alaska, Third
Division :

Comes now the above-named defendant and conceiving himself aggrieved by the judgment made and entered herein on the 12th day of August, 1916, does hereby appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith; and said defendant prays that this appeal may be allowed; that a transcript of the records, proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 7th day of July, 1917.

J. LINDLEY GREEN and
DONOHOE & DIMOND,

Attorneys for the Defendant and Appellant.

Service admitted of the above this 7th day of July, 1917.

L. L. JAMES, Jr.,
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jul. 20, 1917. Arthur Lang, Clerk. By John B. Miller, Deputy. [210]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Assignment of Errors.

Comes now the defendant in the above-entitled cause and makes and files the following assignment of errors upon which the said defendant will rely in the prosecution of his appeal in the above-entitled cause:

I.

The Court erred in overruling the demurrer interposed and filed by said defendant to the complaint of the plaintiff on the ground that said complaint did not state facts sufficient to constitute a cause of action.

II.

The Court erred in overruling the objections of the defendant made at the commencement of the trial of said cause to the introduction of any evidence offered

by the plaintiff in said cause upon the grounds stated in said objection. The said objection and the ruling of the Court thereon as shown by the record of the Court reporter, are as follows, to wit:

Direct Examination by Mr. JAMES.

Q. State your name and residence.

A. Andrew—

Mr. GREEN.—At this time we wish to object to the introduction of any evidence in this case for the reason that the lease was granted without any authority of law and for the further reason that if there was any authority of law for granting the lease on these islands that the Secretary of Commerce has exceeded his authority in granting the lease in the manner and form in which he did and for that reason the lease is void and he has no rights; and for the further reason that the proper form of action has not been brought, that this is an action to quiet title, when our statute provides [211] that in bringing an action to quiet title the person must be in possession and it is necessary to plead that possession; in this case he has not shown such possession as would entitle him to bring an action to quiet title—ejectment would be the proper action.

Mr. WOOLEY.—This is not an action to quiet title, but for a permanent injunction.

The objection was by the Court overruled and defendant allowed an exception to the ruling.

III.

The Court erred in permitting the introduction in evidence by the plaintiff at the trial of said cause of an exhibit marked Plaintiff's Exhibit "A," and in

permitting the plaintiff to testify concerning the same. The questions propounded, the answers thereto, the objections of the defendant and the ruling of the Court upon such objections as shown by the record are as follows, to wit:

Q. I show you this lease (handing witness paper) and ask you if that is your signature and the lease that resulted from the bid? Look at the signature on the last page, and tell us if that is your signature.

A. Yes, that is my signature.

Mr. JAMES.—We ask for the Court to take judicial knowledge of the signature of Edwin F. Sweet, acting for the Department of Commerce and Labor in executing this lease, and we offer it in evidence.

Mr. GREEN.—We object to its introduction in evidence for the reason that the lease is void in that there is no law whereby that department is given the privilege of granting leases and if the Court should even find that there was some statutory authority for it, that this lease is not a lease that should be granted and that the department had no authority to grant a lease in the manner in which they granted this, by advertising for bids, crippling and interfering with an industry which the statute was intended to foster and encourage.

The COURT.—I am not assuming at this time to pass on that question, that is really the question to be determined in the trial of this case. The objection will be overruled.

Defendant allowed an exception to the ruling. The lease is admitted in evidence, marked Plaintiff's

Exhibit "A"—copy is attached hereto and made a part hereof."

IV.

The Court erred in overruling defendant's objections to the introduction of an exhibit marked Plaintiff's Exhibit "B" introduced by the plaintiff at the trial of said cause. The questions propounded, the answer of the plaintiff thereto, the objections of defendant and the rulings of the court upon such objections as shown by the record being as follows, to wit; [212]

"Q. What was the rental value of that property, the Little Koniuji Island—how much per year?

A. The department offered the lease for at least \$200 per year.

Q. And what was your bid for it? A. \$205.

Q. Did you pay that rent?

A. I paid that rent to the department.

Mr. JAMES.—We offer this receipt in evidence, being a receipt from the department for the first year's payment on this lease.

Mr. GREEN.—We make the same objection.

Objection overruled; defendant allowed an exception.

The receipt is admitted in evidence, marked Plaintiff's Exhibit "B"; copy is attached hereto and made a part hereof.

V.

The Court erred in permitting the plaintiff to testify concerning the defendant's possession of a certain island the title to which was disputed herein. The questions propounded, the testimony of the

plaintiff, the objections of defendant and the rulings of the court upon such objections as shown by the record being as follows, to wit:—

“Q. Did the defendant, F. E. Whelpley, at any time have possession of Little Koniuji Island?

Mr. GREEN.—We object; he has not shown whether or not he is prepared to answer the question; he has not laid the foundation.

By the COURT.—You may ask him if he knows—objection overruled.

Q. Answer the question.

A. I understood that he had possession of the island, acting for the Fundy Fox Company.

Mr. GREEN.—We move to strike the answer as not responsive to the question.

Motion denied; defendant excepts.

Mr. GREEN.—Also, it is not shown he knows.

The COURT.—Do you know that he was ever there? That Mr. Whelpley was in possession there?

A. Yes, your Honor, acting for the Fundy Fox Company.

Objection overruled; defendant excepts.”

VI.

The Court erred in permitting the plaintiff to introduce exhibits marked Plaintiff's Exhibits “C” and “D” over the objection of the defendant. The questions propounded, the testimony of the plaintiff, the objections of the defendant, and the rulings of the Court upon such objections as shown by the record being as follows:

“Q. When did you first meet Mr. Colwell?

A. I met him the 18th day of March, 1914.

Q. Where did you meet him? A. Sand Point.

Q. In what connection did you meet him?

A. He was introduced by letter from the Fundy Fox Company as their agent in their Alaska business and also held a letter of introduction from the company to present to me. [213]

Mr. JAMES.—We offer in evidence these letters from the Fundy Fox Company to Andrew Grosvold.

Mr. DIMOND.—We object to them as incompetent, irrelevant and immaterial and not having been signed. And there is no proof offered that this company is in existence and they cannot be introduced under the law to bind the defendant. In the first place, it does not identify this particular island or have any reference to it, and in the second place, there is no testimony that there is such company in existence as the Fundy Fox Company—it is incompetent evidence.

The Court.—I don't know what its effect or weight may be at this time. These rulings will be considered as *pro forma* rulings and at the conclusion of the case, any motion to strike testimony that is not relevant may be made and will be granted. At this time I cannot see the relevancy of it, neither can I say it has no purpose or relevancy. The objection will be overruled and exception allowed.

The letters are admitted as Plaintiff's Exhibits "C" and "D"; copies are attached hereto and made a part hereof."

VII.

The Court erred in overruling the objections of defendant to the testimony of plaintiff concerning con-

versations he had with Mr. Colwell. The questions propounded, the testimony of the plaintiff, the objections of defendant, and the rulings of the Court upon such objections as shown by the record being as follows, to wit:

“Q. Did you have any conversation with Mr. Colwell regarding the Little Koniuji Island?

A. Yes, sir.

Q. State what that conversation was.

Mr. DIMOND.—We object to that on the ground that there has been no proof offered in evidence that Mr. Colwell had any right whatever to bind this defendant or was in any manner an agent of the defendant.

The COURT.—It seems as though this was a little bit anticipating the defense. If you rely upon the lease here, it would seem that would be sufficient until there was some evidence offered on the part of the defendant.

Mr. WOOLEY.—We are willing to rely upon our lease as to the island, but as to the foxes on the island, we want to show that Grosvold acquired title through a subsequent arrangement with Colwell. * * *

Mr. GREEN.—We would like to object on the same grounds, that it is not shown that Colwell had anything to do with the island. Objection overruled, defendant allowed an exception.

VIII.

The Court erred in permitting the plaintiff to introduce over the objection of defendant an exhibit marked Plaintiff's Exhibit “G,” introduced by the plaintiff at the trial of said cause. The questions

propounded, the answer of the plaintiff thereto, the objections of defendant and the rulings of the court upon such [214] objections as shown by the record being as follows:

“Mr. JAMES.—We want to offer in evidence the articles of incorporation of the Fundy Fox Company to show that the witness is wrong.

The WITNESS.—I don't know anything about the Fundy Fox Company, whether they are incorporated or not; they were not when I left them, when I left them as a partner.

Q. When was that?

A. The 17th day of January, 1914.

Mr. JAMES.—We offer these articles of incorporation of the Fundy Fox Company, and we offer this statement with the articles.

Mr. DIMOND.—We object to this. This is an incorporation organized under the laws of the State of Maine, and there is nothing to show any connection between this incorporation and the limited copartnership to which the witness has testified.

The WITNESS.—I have my release from Mr. Williams and Mr. Barker and the Fundy Fox Company partnership.

The COURT.—Do you know anything about this corporation? A. No, sir.

The COURT.—Did you ever hear of it before?

A. No, sir.

Mr. JAMES.—Do you know Mr. Williams?

A. I do.

Q. Weren't you interested with him in the Fundy Fox Company?

A. Not in no Fundy Fox Company, incorporated, no, sir.

The COURT.—They will be admitted for what they are worth. Geo. W. Barker, was he your partner in the Fundy Fox Company? A. Yes, sir.

Mr. JAMES.—The purpose of presenting these articles at this time and the certified copy of that statement was because the witness on direct examination testified distinctly that the Provincial Fox Company dealt in blue foxes exclusively whereas the Fundy Fox Company dealt in the black and cross-foxes, in other words, limiting the Fundy Fox Company to other than blue foxes.

The COURT.—This will be admitted as a matter going to the credibility of the witness.

Defendant allowed an exception to the ruling.

The articles of incorporation, with the statement referred to attached, are admitted in evidence, marked Plaintiff's Exhibit 'G'; copy is attached hereto and made a part hereof."

IX.

The Court erred in sustaining plaintiff's objections to a question propounded to plaintiff by counsel for the defendant. The question propounded, the objections of defendant and the rulings of the Court upon such objection as shown by the record, being as follows, to wit:

"Mr. GROSVOLD recalled by Mr. DIMOND.

Q. Have you not received information from the Department of Commerce recently that they have abandoned their method of leasing this Little Koniuji Island and other fox islands by calling for bids and

they intend hereafter to lease the islands to the parties in possession?

Mr. JAMES.—We object to that as incompetent, irrelevant and immaterial.

Objection sustained; defendant allowed an exception.

X.

The Court erred in refusing to adopt and make and enter [215] the Findings of Fact and Conclusions of Law proposed by the defendant to be made and entered by the Court as the Court's Findings of Fact and Conclusions of Law and decision herein, to which refusal the defendant duly excepted and the exception was allowed.

XI.

The Court erred in making, filing and entering its Findings of Fact and Conclusions of Law, made, filed and entered herein on the 12th day of August, 1916, over the exception to the same made by the defendant, which said exceptions were duly allowed by the Court.

XII.

The Court erred in making, filing and entering its Judgment and Decree herein, made, filed and entered on the 12th day of August, 1916.

WHEREFORE, defendant, the appellant herein, prays that the said judgment and decree of the District Court for the Territory of Alaska, Third Division, made and entered herein as aforesaid be reversed.

J. LINDLEY GREEN and
DONOHOE & DIMOND,

Attorneys for the Defendant and Appellant.

Receipt of a copy of above Assignment of Errors, hereby admitted this 7th day of July, 1917.

L. L. JAMES, JR.,
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Jul. 20, 1917. Arthur Lang, Clerk. By John B. Miller, Deputy. [216]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Order Fixing Amount of Bond on Appeal.

This matter having come on for hearing on the motion of the defendant for an order to fix the amount of the bond for costs to be furnished by said defendant on appeal of the above-entitled cause;

IT IS ORDERED, That the bond on appeal of this cause, to be furnished by said defendant with sufficient sureties, shall be, and the same hereby is, fixed in the amount of five hundred dollars, said bond to be for the costs of such appeal and not to act as a supersedeas.

Done at Valdez, Alaska, this 5th day of May, 1917.

By the Court:

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, May 5, 1917. Arthur Lang, Clerk. By Chas. A. Hand, Deputy.

Entered Court Journal No. 11, page No. 232.

[217]

COPY.

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Bond for Costs on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we F. E. Whelpley, as principal, and Hugh Dougherty, a resident of Seward, Alaska, and Geo. A. Mitchell, a resident of Seward, Alaska, as sureties, are held and firmly bound unto the above-named plaintiff Andrew Grosvold in the sum of five hundred dollars (\$500) to be paid to the said Andrew Grosvold, his heirs, executors or administrators, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally and firmly by these presents.

Sealed with our seals and signed by us, and each of us, on this 22 day of May, 1917.

WHEREAS, lately at a term of the above-named

court in the above-entitled cause on the 12th day of August, 1916, judgment was rendered in favor of the above-named plaintiff Andrew Grosvold, and against the above-named defendant F. E. Whelpley, and the said defendant being about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the said judgment and is about to have a citation issued directed to the plaintiff citing and admonishing him to be in said United States Circuit Court of Appeals for the hearing upon said appeal.

NOW, the condition of the above obligation is such that [218] if the said F. E. Whelpley shall prosecute his appeal to effect and answer all damages and costs, if he fails to make his plea good, then this obligation to be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 22 day of May, 1917.

F. E. WHELPLEY, (Seal)
Principal.

HUGH DOUGHERTY, (Seal)
Surety.

GEO. A. MITCHELL, (Seal)
Surety.

Signed and sealed in the presence of

J. LINDLEY GREEN.

JAMES PETERSON.

United States of America,
Territory of Alaska,
Third Division.

Hugh Dougherty and Geo. A. Mitchell, being first duly sworn, each for himself and not one for the other, deposes and says; that he is not an attorney or counselor at law; that he is not a marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities and exclusive of property exempt from execution.

HUGH DOUGHERTY,
GEO. A. MITCHELL.

Subscribed and sworn to before me this 22 day of May, 1917.

[Official Seal]

J. LINDLEY GREEN,
Notary Public for Alaska.

My commission expires November 20, 1917.

The foregoing bond for costs on appeal approved this 20th day of July, 1917.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Jul. 20, 1917. Arthur Lang, Clerk. By John B. Miller, Deputy. [219]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Order Allowing Appeal.

On motion of the defendant, by his attorneys J. L. Green, Esquire, and Messrs. Donohoe & Dimond, it is hereby ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree heretofore and on the 12th day of August, 1916, made, filed and entered herein be, and the same is hereby allowed to said defendant; and that a certified transcript of all of the records, proceedings and papers herein, upon which the said judgment made and entered herein was rendered, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Done this 20th day of August, 1917.

FRED M. BROWN,

Judge of the District Court for the Territory of
Alaska, Third Division.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Jul. 20, 1917. Arthur Lang, Clerk. By John B. Miller, Deputy.

Entered Court Journal No. 11, page No. 313.

[220]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Citation to Appellee on Appeal.

To Andrew Grosvold, the Above-named Plaintiff,
and to Messrs. L. L. James, Jr., and Morford &
Finnegan, His Attorneys, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, in the state of California, on the 19th day of August, 1917, pursuant to an order allowing an appeal, made, filed and entered in the clerk's office of the District Court for the Territory of Alaska, Third Division on the 20th day of July, 1917, from a final judgment and decree made, signed, filed and entered on the 12th day of August, 1916, in that certain action in said court wherein the above-named defendant F. E. Whelpley is appellant and you are respondent and appellee, being cause No. 804 of said District Court, to show cause, if any there be, why the judgment and decree in said order allowing the

appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 20th day of July, in the year of our Lord one thousand nine hundred and seventeen.

FRED M. BROWN,
Judge of the District Court for the Territory of
Alaska, Third Division.

Attest:

ARTHUR LANG,
Clerk.

Filed in the District Court, Territory of Alaska,
Third Division. Jul. 24, 1917. Arthur Lang, Clerk.
By John B. Miller, Deputy.

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

**Admission of Service of Citation to Appellee on
Appeal.**

Due service of the foregoing citation to appellee on appeal in the above-entitled cause, by receipt of

a true copy thereof on this the 23d day of July, 1917,
is hereby admitted.

L. L. JAMES, JR.,
One of the Attorneys for Plaintiff.

MORFORD & FINNEGAN.

By S. V. MORFORD,
Attorneys for Plaintiff. [221]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

Praeipie for Transcript of Record on Appeal.

To Arthur Lang, Clerk of the Above-entitled Court.

You are requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to an appeal allowed in the above-entitled cause and to include in such transcript of record the following papers and exhibits, to wit:

1. BILL OF EXCEPTIONS CONSISTING OF:

- (a) Plaintiff's complaint;
- (b) Defendant's Demurrer to the Complaint;
- (c) Order of court overruling such demurrer;
- (d) Defendant's answer;

- (e) Plaintiff's reply;
- (f) Court reporter's transcript of the testimony given upon the trial of the cause, including the depositions of A. S. Catlin, Charles Christiansen, S. O. Casler, Hjalmer Christiansen, John Gardner, Harry Richards, George Cushing, F. E. Williams, and Conrad Syvertsen, and including plaintiff's exhibits A, B, C, D, E, F, G, H, and I;
- (g) Defendant's exhibits 1 and 2;
- (h) The opinion of the court;
- (i) The findings of fact and conclusions of law proposed by the defendant to the court for signing and entry.
- (j) The order of the court refusing to make and enter such findings of fact and conclusions of law proposed by the defendant and allowing an exception;
- (k) The findings of fact and conclusions of law made and entered by the court;
- (l) The defendant's exceptions to such findings of fact and conclusions of law made and entered by the court;
- (m) The Decree;
- (n) The order of the court granting the defendant until November 30, 1916, to prepare, settle and file his bill of exceptions on appeal;
- [222]
- (o) Stipulation of the plaintiff and defendant that defendant should have until January 31, 1917, to prepare, settle and file his bill of exceptions on appeal;

- (p) The order of the court on such stipulation;
 - (q) The order of Judge Bunnell of January 26, 1917, granting defendant until February 20, 1917, to prepare, settle and file his bill of exceptions on appeal;
 - (r) Minute order of the court of February 19, 1917, enlarging time in which defendant could prepare, settle and file his bill of exceptions on appeal for a period of ten days from and after the said last-named date;
 - (s) The order of the court of February 28, 1917, enlarging time for preparation, settlement and filing of bill of exceptions on appeal until March 31, 1917;
 - (t) The order of the court of March 23, 1917, enlarging time for preparation, settlement and filing of bill of exceptions until April 10, 1917;
 - (u) The order of the court of April 9, 1917, enlarging the time for the preparation, settlement and filing of bill of exceptions on appeal for a period of fifteen days from and after the last-named date.
2. Order of court settling and certifying bill of exceptions.
 3. Petition for appeal.
 4. Assignment of errors.
 5. Order of court fixing amount of bond for costs on appeal.
 6. Bond for costs on appeal.
 7. Order allowing appeal.

8. Citation to appellee on appeal. Original.
9. This praecipe.
10. Certificate of clerk of court to transcript of record on appeal.

Dated at Valdez, Alaska, this 20th day of July, 1917.

J. LINDLEY GREEN and
DONOHOE & DIMOND,
Attorneys for Defendant and Plaintiff in Error,
Appellant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Jul. 20, 1917. Arthur Lang, Clerk. By John B. Miller, Deputy. [223]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 804.

ANDREW GROSVOLD,

Plaintiff,

vs.

F. E. WHELPLEY,

Defendant.

United States of America,
Territory of Alaska,
Third Division,—ss.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, Arthur Lang, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the hereto annexed 223 pages, numbered

from 1 to 223 inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above-entitled cause, as the same appears on the records and files in my office; that the same is made in accordance with the stipulation of counsel for the parties respectively.

I further certify that the foregoing transcript has been prepared, examined and certified to by me and the cost thereof, amounting to \$55.80, was paid to me by Messrs. Donohoe & Dimond, attorneys for the defendant, and plaintiff in error herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this Court at Valdez, Alaska, this 22d day of July, A. D. 1917.

[Seal]

ARTHUR LANG,

Clerk of the District Court for the Territory of
Alaska, Third Division.

[Endorsed]: No. 3027. United States Circuit Court of Appeals, for the Ninth Circuit. F. E. Whelpley, Appellant, vs. Andrew Grosvold, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Third Division.

Filed August 3, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

